
AIR 1948 Mad 45 : (1947) 60 LW 495 : (1947) 2 MLJ 156

Madras High Court

Case No: None

Natesa Naicker

APPELLANT

Vs

Mari Gramani and
Another

RESPONDENT

Date of Decision: April 3, 1947

Acts Referred:

- Criminal Procedure Code, 1898 (CrPC) - Section 247

Citation: AIR 1948 Mad 45 : (1947) 60 LW 495 : (1947) 2 MLJ 156

Hon'ble Judges: Yahya Ali, J

Bench: Division Bench

Judgement

@JUDGMENTTAG-ORDER

Yahya Ali, J.

This is an application to revise the order of acquittal passed by the Stationary Sub-Magistrate of Chingleput in C.C. No.

2470 of 1946 on his file u/s 247 pf the Code of Criminal Procedure. That case arose upon a complaint filed by the petitioner herein against the

respondent alleging the commission of offences by the respondents under Sections 447 and 426 of the Indian Penal Code. The case was posted

first and heard on 6th December, 1946. After the examination of the complainant, it was adjourned to 16th December, 1946, for further evidence.

On that day when the case was called, the complainant was not present either in person or by pleader and consequently the Sub-Magistrate acting

u/s 247 of the Code of Criminal Procedure, acquitted the respondent- accused.

2. In the affidavit filed by the petitioner in this Court in this case, it is alleged that on that day he and his witnesses were present in Court from 10

a.m., that just before the case was called, the advocate appearing for the accused called him and asked him to fetch his vakil as the case was about

to be called, that he immediately went to the Civil Court where his advocate was engaged and brought him before the Magistrate's Court within a

five minutes, but in the meantime the case had been called and the respondent had been acquitted. This version has been supported in the affidavits

of the Village Munsiff and of another person who is said to have been present for being examined as a witness by the complainant in his case.

These allegations have, however, been refuted by the respondent in his affidavit, in which. he says that none of the witnesses were present, that the

case was called at 1 p.m., and until then nobody had turned up, that the complainant gave up the case as he considered it futile to adduce any

evidence. It is scarcely necessary to go into the merits of these averments as the legal position as to the applicability of Section 247 of the Code of

Criminal Procedure to the facts that transpired, is perfectly clear and free from doubt. Section 247 provides

If the summons has been issued on complaint, and upon the day appointed for the appearance of the accused, or any day subsequent thereto to

which the hearing may be adjourned, the complainant does not appear, the Magistrate shall, notwithstanding anything hereinbefore contained acquit

the accused, unless for some reason he thinks proper to adjourn the hearing of the case to some other day.

The proviso to the section is not material. It will be apparent from the language of the section that when in a summons case the complainant does

not appear, it is imperative on the part of the Magistrate to acquit the accused, unless there is a proper reason for adjourning the hearing of the

case. It is not the case of the complainant that there was any such reason of which the Magistrate was aware at the time he called the case and the

complainant was absent. In these circumstances, there was no discretion in the matter ; the Magistrate was bound by the statute to acquit the

accused. Where, therefore, an order has been passed in conformity with statutory duty, it must be held to be a proper and correct order, and there

can be no question of revising such an order merely because it would cause some hardship to the party.

3. In Criminal Revision Case No. 229 of 1925 Jackson, J., had taken the view that the appearance of the complainant in any portion of the day is

sufficient compliance with Section 247 and that the Magistrate was bound to wait for the appearance of the complainant until the close of the day.

This view which was contrary to the prevailing judicial opinion at that time was dissented from by a Division Bench of this Court in *Tonkya v.*

*Jaganna*¹. In that case, it was held that Section 247 makes it obligatory on the Magistrate to acquit the accused if the complainant does not

appear, unless there was proper reason before the Magistrate for the adjournment of the hearing of the case. The learned Judges said:

Though the Magistrate could very well have waited for a short time, it cannot be said that the order of the Magistrate is illegal. He acted within his

powers and when the order is not illegal it would not be right for this Court to interfere with it.

4. Considering the argument about hardship, which has also been repeated in this case, the learned Judges observed that the hardship that may be

caused to complainant in construing the section cannot be considered, as no forced construction can be given to the very clear words of the

section. This decision has been followed in a number of cases decided by single Judges, but it is not necessary to cite them. I must hold, following

the Bench decision, that the order of the Sub-Magistrate is perfectly legal and competent and cannot be interfered with in revision.

5. The petition is dismissed.