(1960) 08 GAU CK 0001

Gauhati High Court

Case No: None

Wahengbam Tomchou Singh and Others		APPELLANT
	Vs	
Chingakham Amusna Singh		RESPONDENT

Date of Decision: Aug. 10, 1960

Acts Referred:

- Penal Code, 1860 (IPC) - Section 430

Citation: AIR 1961 Guw 34 : (1961) CriLJ 352

Hon'ble Judges: T.N.R. Tirumalpad, J

Bench: Single Bench

Judgement

@JUDGMENTTAG-ORDER

T.N.R. Tirumalpad, J.
The learned Sessions Judge has made this reference to quash the order of the First Class Magistrate, Manipur, Sri B, Ahmad, reviving the Criminal Case No. 17 of 1959 after its dismissal u/s 259 Cr. P.C.

2. The short facts are as follows:

On. 17-1-1959, the respondent filed a complaint u/s 430 I.P.C. against the petitioners and after Police Report and after summoning the petitioners the case was posted to 10-8-1959. On that date the complainant was absent and the Magistrate passed the order that the accused be discharged u/s 259 Cr. P.C. Shortly hereafter, the respondent appeared in Court and filed a petition stating that he was present in the Court compound, but that he did not hear the case being called out and that he heard only just then that the case had been struck off because of his absence. He, therefore, requested that the complaint may be restored. Thereupon the Magistrate passed another order on the same date that the explanation given by the complainant for his non-appearance appeared quite possible and was accepted and that the dismissal order was therefore set aside and the case restored to file and he

ordered issue of summons to the parties.

3. When the petitioners received the summons they filed a revision petition on 23-12-1959 before the Sessions Judge stating that the learned Magistrate acted wrongly in restoring the complaint and in setting aside the order of dismissal and that he had no power to do so under the Code of Criminal Procedure. The learned Sessions Judge agreed with the petitioners and has made this reference stating that there was no provision in the Code of Criminal Procedure allowing a Court to set aside the order of dismissal and discharge of the accused u/s 259, Cr. P.C. and that the remedy for the complainant was only by filing a fresh complaint. He relied on the decision Bhagwan Sahai Vs. Moti Lal, He refused to rely on the ruling In re In Re: Wasudeo Narayan Phadnis and Others, and he has made this reference.

4. It may be mentioned here that it was a warrant case, that no charges had yet been framed and even the preliminary enquiry had not commenced and the dismissal of the complaint and the discharge of the accused by the Magistrate was not on the merits of the case, but merely on the ground of the absence of the complainant. The order of the Magistrate is not therefore a judgment within the meaning of Section 366 Cr. P.C. and therefore Section 369 Cr. P.C. providing that the Court was not to alter its judgment will not apply to this case. The question for decision is whether a Magistrate was competent to revive a warrant case triable under Chapter XXI; Cr. p. C. in which he had, discharged the accused persons under, Section 259 Cr. P.C.

5. This matter has been considered exhaustively by a Full Bench of seven Judges of the Calcutta High Court in the case Dwarka Nath Mandul v. Benimadhab Banerjee ILR Cal 652 and the question was answered in the affirmative. In the decision Emperor v. Chinna Kaliappa Gounden ILR Mad 128, a Full Bench of the Madras High Court approved of the Calcutta decision and held that the dismissal of a complaint u/s 203 Cr. P.C. will not operate as a bar to the rehearing of the complaint by the same Magistrate even when such an order of discharge has not been set aside by a competent authority. To the same effect is another Full Bench decision of the Calcutta High Court in Mir Ahwad Hossein v. Mahomed Askari ILR Cal 726.

6. The learned Sessions Judge has referred to a decision Bhagwan Sahai Vs. Moti Lal, But the facts in that case were a little different. There, the accused were discharged for the default of appearance of the complainant on a certain day after the trial had proceeded to some extent and the complainant on the same day filed a fresh complaint and the Magistrate after issue of notice to the accused persons had posted the fresh complaint to another day for recording evidence.

On the latter day, an application was tiled stating that the earlier complaint may be revived and reliance was placed for it on the decision in AIR 1950 Bom 10 and it was pointed out that there was no necessity for a fresh trial and that the case could foe taken up from the stage when the order of dismissal was passed. The learned

Magistrate accepted the application.

What was held in that decision was that the case should be proceeded with on the fresh complaint filed and not by reviving the old complaint. Permission was not given to take advantage of the Bombay Ruling. Even, in that decision the Bombay ruling was not dissented from expressly, though the learned Judge held that there was no provision in the Cr. P.C. for the revival of a complaint which had been dismissed u/s 259 Cr. P.C. or for the setting aside of the order of discharge by the trial Court.

7. It is true that there is no provision in the Cr. P.C. for the revival of a complaint in which the accused have been discharged u/s 259. But, it is not possible for me to accept the proposition that a Criminal Court should not do anything which is not expressly provided for in the Cr. P.C. Alter all, it is not possible in a Procedural Code to provide for all contingencies. The real position is that a Criminal Court should not do a thing which is expressly prohibited in the Procedural Code and not that it should not do a thing which is not expressly provided for.

A Court of law has inherent power to act in a manner to enable it to discharge its functions as a Court of justice subject of course, to the statutory provisions. This has been pointed out in the decision Pulin Behari Das v. Emperor 16 CWN 1105 . Again, as pointed out in the decision AIR 1940 390 (Nagpur) the absence of any provision on a particular matter in the Cr. P.C. does not mean that the Court has no such power and the Court may act on the principle that every procedure should be understood as permissible till it is shown to be prohibited by law.

8. Thus, the real question is whether the revival of a complaint dismissed for default u/s 259 Cr. P.C. is prohibited by the Cr. P.C. There is no provision which prohibited it. Such dismissal of the complaint or discharge of the accused will not amount to an acquittal within the meaning of Section 403 Cr. P.C. After all, the restoration of a complaint before the framing of the charge and before even the preliminary enquiry has started will only mean that instead of a fresh complaint on the same cause of action and the taking of a sworn statement from the complainant, the Court permits the enquiry on the complaint which had already been filed before it and happened to be dismissed for default.

I think that a Criminal Court has got the inherent power to revive such a complaint. Of course, the matter will be quite different in a Summons Case where the accused had been acquitted for the complainant''s default u/s 247 Cr. P.C. as it would amount to an acquittal within the meaning of Section 403 Cr. P.C. I cannot, therefore, accept the reference made by the Sessions Judge. The reference is rejected and the Magistrate is directed to proceed with the case.