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**(1957) 01 MP CK 0004**

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

**Case No:** Criminal A. No. 23 of 1956

Union of India

APPELLANT

Vs

Manikchand

RESPONDENT

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**Date of Decision:** Jan. 4, 1957

**Acts Referred:**

- Criminal Procedure Code, 1898 (CrPC) - Section 247, 417

**Citation:** (1957) LJ 811

**Hon'ble Judges:** S.M. Samvatsar, J; P.V. Dixit, J

**Bench:** Division Bench

**Advocate:** P.R. Sharma, Govt, for the Appellant; D.C. Bharucha, for the Respondent

**Final Decision:** Allowed

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**Judgement**

Dixit, J.

This is an appeal by the State under Sec. 417, Cr.P.C., from an order of the Additional District and Railway Magistrate, Indore City, acquitting the respondent Manikchand under Sec. 247, Cr.P.C.

2. The facts are that on 23rd March, 1955, Shri Ramchandra, an Inspector appointed under Sec. 19 of the Minimum Wages Act, 1948, filed a complaint against Manikchand under Sec. 22 (2) of the Act. When the case was called on for hearing shortly after 2 P.M. on 12th December, 1955, which was the date fixed for recording the prosecution evidence, the complainant and his counsel were not present in the Court. The accused and his counsel were, however, present. Thereupon the learned Magistrate gave an oral direction that the complaint would be dismissed and the accused would be acquitted. Soon after this direction was given the complainant and his counsel appeared in the Court and presented an application stating that the case was to come up for hearing at 2 P.M. that at that time they were present in the Court and their presence was personally noted by the Magistrate; that as the learned Magistrate was in the midst of another case, they left the Court and were

sitting in a nearby building where the Court of Additional District Judge was located; that when they again appeared before the Magistrate at about 2-40 P.M. they were informed by him that the case had already been called on for hearing and an oral order acquitting the accused had been passed; and that as no order acquitting the accused had been written out, the presence of the complainant at the time when the case was called on for hearing be excused and the case against the accused be proceeded with. The Magistrate rejected this prayer and accorded an order stating the circumstances in which he had made the oral order under Sec. 247, Cr.P.C. and acquitted the accused.

3. Mr. Sharma, learned Government Advocate, argued that as the complainant was present before an order in writing acquitting the accused was made, signed and pronounced by the Magistrate, the Magistrate had no jurisdiction to acquit the accused under Sec. 247, Cr.P.C. Mr. Bharucha, learned counsel appearing for the accused, contended that when the complainant was absent at the time when the case was called on for hearing, the Magistrate had no option but to acquit the accused under Sec. 247, Cr.P.C., and that the fact that the complainant appeared before an order in writing acquitting the accused was made did not entitle the Complainant to have the oral order of the Magistrate acquitting the accused altered. It was said that the oral order was final and conclusive and even if the Magistrate had omitted to pass a written order, that would have at the most amounted to an irregularity curable under Sec. 537, Cr.P.C.

4. In my judgment, this appeal must be accepted. Three facts clearly emerge from the record, First, that the complainant and his counsel were present in the Court before the case was taken up for hearing and their presence was noticed by the Magistrate. The learned Magistrate has not stated in his order that the statement of the complainant that he did appear in the Court before the case was called on for hearing, was not true. On the other hand by observing that if the complainant and his counsel wanted to leave the Court they could have gone after obtaining the permission of the Court and that they need not have gone and sat in a building which was at a distance of 100 paces where they could not hear the court peon calling the case. The learned Magistrate impliedly accepted the statement of the complainant that he was present in the Court before the case was taken up for hearing. The second fact which is very clear from the record is that the complainant and his counsel were not present in the Court when the case was actually called on for hearing and that when the complainant was absent the Magistrate made an oral order that the complaint would be dismissed and the accused would be acquitted. Thirdly, it is also plain that the complainant and his counsel were present in the Court before and at the time when an order in writing acquitting the accused under Sec. 247, Cr.P.C. was recorded by the Magistrate, Leaving aside the question whether in the above circumstances the Magistrate was right in treating the complainant as absent and giving an oral direction for the acquittal of the accused, and assuming that the Magistrate was justified in giving the oral direction that he

did, there was nothing to prevent the Magistrate from reviewing the oral order and proceeding with the case against the accused when the complainant appeared soon after the making of the oral order and before an order in writing acquitting the accused had been recorded. Under Sec. 369, Cr.P.C. no Court when it has signed its judgment can alter or review the same except to correct a clerical error. The provisions of Sec 369, Cr.P.C. suggest that a subordinate Court can alter or review an oral judgment before a judgment in writing is signed. It cannot be denied that there were good grounds for reviewing the oral order acquitting the accused when the complainant was present in the Court before the case was taken up for hearing and also at the time when the Magistrate recorded an order in writing acquitting the accused and when his absence at the time when the case was taken up for hearing was accidental and not deliberate. The learned Magistrate overlooked altogether this aspect of the matter. The application which the complainant presented to the Court immediately after the making of the oral order was in substance one for review of the oral order. The Magistrate's omission to review the oral order when there were valid grounds for it only lends colour to the suggestion that he attempted to clutch at the jurisdiction conferred by Sec. 247, Cr.P.C. just for the purpose of disposing of the case and putting an end to it anyhow.

5. For these reasons, the appeal is allowed and the order of acquittal of the accused is set aside with a direction that the complaint will be taken on the file and shall be disposed of according to law.

Samvatsar, J.

6. I agree.