(1958) JLJ 261

Madhya Pradesh High Court (Gwalior Bench)

Case No: Criminal Rev. No. 68 of 1957

Surajjanlal	APPELLANT
Vs	
Kanhaiya Lal	RESPONDENT

Date of Decision: Jan. 14, 1958

Acts Referred:

- Penal Code, 1860 (IPC) - Section 323

Citation: (1958) JLJ 261

Hon'ble Judges: A.H. Khan, J

Bench: Single Bench

Advocate: J.P. Gupta, for the Appellant; Saejwalkar for Opponent and Shivdayal Dy. Government Advocate for State, for the Respondent

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

Khan J.

1. The facts giving rise to this revision in short are that the Magistrate First Class, Shajapur, tried the accused u/s 323 I.P C. The allegations in the complaint were that the complainant was called by the accused and given a beating. The trial Court on 15-11-56 made an order discharging the accused. Against this decision, the complainant filed a revision before the Additional Sessions Judge, Shajapur, who set aside the order and remanded the case to the trial Court for proceeding further in the matter, The present revision is filed against this order of remand.

2. The accused was being tried u/s 323 I.P C. and it was a summons case. In the trial of the summons case, the law contemplates an order of acquittal or conviction. When the Magistrate finds that no case is made out against the accused, be in fact acquits the accused though he may call his order an order of discharge. In 11 Criminal Law Journal,

350 The tharappa Pillai vs. Bencatrama Aiyar) this view has been taken.

3. In this case it appears that the Magistrate used the word "discharge" in letting off the accused. The proper word which he should have used was "acquittal". In a case of acquittal the Sessions Judge or the Additional Sessions Judge has no power to take action u/s 436 of the Cr.P Code. Therefore the learned Additional Sessions Judge has erred in setting as de the order of acquittal. All that the Sessions Judge is competent to do is to report the matter to the High Court u/s 438 of the Cr.P Code.

4. For reasons stated above the order of the Sessions Judge, setting aside the acquittal is quashed.

This order shall not prevent the Additional Sessions Judge to refer the matter to the High Court, should he care to do so.