
(1961) 11 MP CK 0009

Madhya Pradesh High Court

Case No: Criminal Appeal No. 390 of 1961

Dagadu Bonder

APPELLANT

Vs

Babu Singh Gappal
Singh and Others

RESPONDENT

Date of Decision: Nov. 9, 1961

Acts Referred:

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

Citation: AIR 1962 MP 383 : (1962) JLJ 1097 : (1962) 7 MPLJ 538

Hon'ble Judges: P.V. Dixit, C.J; K.L. Pandey, J

Bench: Division Bench

Advocate: B.B.L. Shrivastava, for the Appellant; Rameshwar Prasad Verma, for the Respondent

Final Decision: Allowed

Judgement

Dixit, C. J.

This is an appeal by special leave u/s 417 (3) of the Criminal Procedure Code from an order of Shri Bhargava, Second Class Magistrate, Khandwa, acquitting the respondents u/s 247 of the Code of charges u/s 323 read with Section 109, I. P. C.

The circumstances in which the respondents were acquitted are that on 17th February, 1961 the Complainant, who is the appellant here, was absent. His counsel informed the Court that the complainant was ill and was unable to attend. When counsel for the accused asked the Court to pass an order of acquittal u/s 247 of the Criminal Procedure Code, complainant's counsel asked for time to enable him to produce a medical certificate to show that the complainant was ill and unable to attend. The trial Magistrate granted this prayer and adjourned the hearing to 27th February, 1961. On this date a medical certificate was produced. It stated that the complainant was suffering from influenza on 17th February, 1961. The trial Magistrate accepted the truth of the statement

contained in the certificate but thought that the complainant should have applied beforehand to the Court for being excused for his absence on that day. On this reasoning he passed an order on 27th February, 1961 acquitting the respondents u/s 247 because of the absence of the complainant on 17th February, 1931.

This appeal must be allowed. It would appear from the wording of Section 247 of the Criminal procedure Code that when the complainant is absent on the date of hearing the Magistrate can on that day pass an order either acquitting the accused or adjourning the hearing of the case to some other date. If he thinks that the personal attendance of the complainant is not necessary, then under the proviso to Section 247 the Magistrate can proceed with the case in the absence of the complainant. The question whether the accused should be acquitted or the hearing of the case should be adjourned has to be decided on that very day of hearing on which the complainant is absent. Section 247 does not permit an adjournment of the hearing of the case for the purpose of determining whether on the previous date on which the complainant was absent he had sufficient reason for absenting himself. As pointed out by this Court in AIR 1940 357 (Nagpur) , the word "hearing" in Section 247 has not been used in the limited technical sense of an investigation of a controversy raised by the complaint. Even if the adjourned hearing is for a nominal "purpose or for determining a side issue there would be a hearing for the purpose of Section 247. It would, therefore, appear that after having adjourned the hearing from 17th February 1961 to 27th February, 1961 the Magistrate could not proceed to acquit the accused on the ground that the complainant was absent on the previous hearing. Such a construction would be in accord with the object of Section 247, which is to prevent the complainant from being dilatory in the prosecution of the case and to prevent harassment of the accused. If hearings were to be adjourned for the purpose of determining whether the complainant was prevented by sufficient or reasonable cause from appearing on a date of hearing and if ultimately it is found that the complainant was absent for good reason, then the whole object of Section 247 would be defeated.

That apart, even on merits the learned Magistrate was not justified in acquitting the respondents, He believed the statement of the complainant appellant that on 17th February, 1961 he was ill and could not be present. Having done that, it was altogether unreasonable on the part of the Magistrate to have taken the view that the complainant should have foreseen his illness on 17th February, 1961 and should have applied to the Court in good time for being excused for his non-appearance on that day. Then again, this was a case in which the Magistrate could have proceeded with the case under the proviso in the absence of the complainant as all the evidence of the complainant had been taken on 14th February, 1961 itself and the case was fixed for examination of the accused and for defence evidence.

For all these reasons, the order dated 27th February, 1961 of the Second Class Magistrate, Khandwa, acquitting the respondents is set aside, and he is directed to proceed with the case in accordance with law.