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(1949) 06 CAL CK 0003

Calcutta High Court

Case No: Criminal Revision Case No 369 of 1949

Ram Chand Kapur APPELLANT

Vs

Mohan Lal RESPONDENT

Date of Decision: June 22, 1949

Final Decision: Allowed

Judgement

Harries, C.J.
This is a petition for revision of an order of a learned Presidency Magistrate discharging the Opposite Party upon a charge under sec. 409 of the Indian Penal Code. The complainant made a complaint against the Opposite Party charging him with an offence under sec. 409, of the Indian Penal Code alleging that the Opposite Party had criminally misappropriated a quantity of rayon yarn and also a sum of Rs. 900.

2. The learned Magistrate heard the case and it appears that by February 9, 1949, all the prosecution witnesses had been examined. The case was adjourned to February 10 for argument on the question of framing charges. It is quite clear, therefore that on February 9, 1949, the learned Magistrate had in mind the framing of charges upon this evidence. On February 10 when the case was called on, the complainant was found to be absent and the learned Magistrate recorded the following order:

Complainant found absent on repeated calls. None appears. No. step taken. There is no evidence to show that the accused ever took delivery of the goods in question or misappropriated them. Accused discharged under sec. 253 Cr. P.C.

3. This order is somewhat strange. If there was no evidence why was the case adjourned to February 10 for framing charges? I can not help feeling that the absence of the complainant had a good deal to do with the order of discharge passed on February 10. The learned Magistrate could have passed an order of discharge But not under sec. 253 of the Code of Criminal Procedure. Where a complainant does not appear, the accused may be discharged under sec. 259 of the Code. The accused can only be discharged under sec. 253 of the Code when all the evidence-in-chief has been taken and the

accused examined if the learned Magistrate thinks that an examination is necessary. The order-sheet does not record that the accused was examined and does not record that the learned Magistrate thought that an examination was not necessary. As the provisions of sec. 253 were not complied with, the order discharging him under that section cannot be maintained. No great hardship will be incurred by the accused if this order is set aside and the complainant is given an opportunity to appear and contend that upon the evidence the charges should be framed.

4. The complainant explains his absence by stating that there was a misunderstanding. That might be so and in any event I think the ends of justice require that the complainant should be heard before any further order is passed.

5. In the result, therefore, I would allow this petition, set aside the order of the learned Magistrate discharging the accused and send the case back to the learned Magistrate to be disposed of according to law. He will hear the complainant and then decide what course he will take. The Rule is accordingly made absolute.

J.P. Mitter, J.

I agree.