
(1954) 05 RAJ CK 0004
In the Rajasthan High Court

Ajmer Municipal Committee

APPELLANT

Vs

Jethanand Wadhmal

RESPONDENT

Date of Decision : 15-05-1954

Acts Referred:

Criminal Procedure Code, 1898 (CrPC) — Section 247, 439

Citation : (1956) CriLJ 165

Hon'ble Judges : Sharma, J.C.

Bench : Single Bench

Judgement

Sharma, J.C.

1. This is a revision against an order of the learned Honarary Magistrate Shri U. C. Bhattacharya acquitting the opposite party Shri Jethanand Wadhmal u/s 247, Cr. P.C.
2. On the complaint of the Executive Officer, Municipal Committee, 17 cases u/s 179, Ajmer-Merwara Municipalities Regulation were filed against the opposite party. He was examined on 25-7-1953 and the case was adjourned from time to time. On 14-10-1953 an application was made on behalf of the opposite party u/s 94, Cr. P.C. for the production of certain documents by the Executive Officer himself or through somebody. The Magistrate made an order calling for the documents and adjourning the case to 25-11-1953 for the consideration of the application u/s 94, Cr. P.C. On that date, the opposite party made an application for his acquittal on the ground that the complainant Executive Officer was absent and had been absent throughout and his presence had not been dispensed with. On 16-12-1953 the Magistrate passed an order acquitting the opposite party and dismissing the complaints u/s 247, Cr. P.C.
3. The Municipal Committee made an application in revision to the Sessions Judge but it has been dismissed.
4. The validity of the order dated 16-12-1953 has been challenged on the grounds that the offences of which the opposite party was charged being under a

special Act, the provisions of Cr. P.C. do not strictly apply and under the proviso to Section 247, Cr. P.C. the absence of the Executive Officer, a public servant, unless required by the Magistrate could not entail the dismissal of the complaints.

5. Unless a particular Act prescribes a special procedure for the trial of an offence, the Cr. P.C. will be followed as provided in Section 5(2) of the Code. No special procedure is laid down in the Ajmer-Merwara " Municipalities Regulation for an offence u/s 179 or for any other offence. The learned Counsel for the Municipal Committee has referred to Section 229 of the Regulation but that only bare the cognizance of the offences under the Regulation except upon a complaint by the Municipal Committee or by some person authorized by the Committee in this behalf. But once the cognizance is taken by the court, the Cr. P.C. will apply.

Reference has been made to -- "Sheokumar Pandey v. Babu Nandan" AIR 1924 All 928 (A) in which it was held that prosecution under the U.P. Act II of 1916 was not one instituted upon complaint since the Magistrate takes cognizance from information received. Consequently Section 247, Cr. P.C. does not apply and non-appearance of the complainant does not justify dismissal of the complaint. But this case is clearly distinguishable as the prosecution was instituted not upon information but upon the complaint of the Executive Officer, Section 247, Cr. P.C. was, therefore, fully applicable.

6. The proviso to Section 247, Cr. P.C. says:

... Where the complainant is a public servant and his personal attendance is not required, the Magistrate may dispense with his attendance, and proceed with the case.

7. The contention on behalf of the Municipal Committee is that unless the personal attendance of a public servant is required, the Magistrate will proceed with the case and not dismiss the complaint. Reliance in support has been placed upon - Pirag Lal Vs. Rustam Singh, in which it was remarked that the only exception made in Section 247, Cr. P.C. is for a public servant whose personal attendance is not required by the Magistrate. In the case of anybody, except a public servant, the personal attendance of the complainant is necessary. The observations are in the nature of an obiter dicta as the complainant in the case was not a public servant.

Further reference has been made to - "Kutch Govt. v. Ishwarlal Thakordas" AIR 1949 Kut 22 (C), where it was held that merely because one of the witnesses namely the public servant is absent, the Magistrate cannot refuse to examine other witnesses. The case is different when the complaint is filed not by a public servant but by a private servant and it was unjust and unwarranted by law to terminate the case at once. Almost similar view was taken in - "Excise Department v. Magiah" AIR 1951 Hyd 54(D).

Reliance on behalf of the opposite party has been placed upon the decision of the

Court reported in - "Arjundas Tulsidas v. G.K. Bhagat" AIR 1954 RAJ 31(2) (E) in which it was held that where the attendance of the complainant public servant is not actually dispensed with, the Magistrate can either adjourn the case for proper reasons or acquit the accused. It was further remarked:

It appears to me that the difference between the case of a public, servant and a private person is that the attendance of a public servant may be dispensed with.

8. With all respect I am in full agreement with the above decision. Where a complaint is by a person who is not a public servant, Section 247, Cr. P.C. does not give the Magistrate any discretion to dispense with his attendance. He can either acquit the accused or adjourn the hearing for some reasons, he thinks proper. But under the proviso, the Magistrate may in his discretion dispense with the personal attendance of a public servant complainant if his personal attendance is not required. The contention on behalf of the Municipal Committee is that unless the Magistrate requires the personal attendance of a public servant, he cannot acquit the accused. The contention is not borne out by the plain words of the proviso. The Magistrate may exercise a discretion suo motu or on the application of the public servant concerned. But unless the personal attendance of a complainant is dispensed with, the only course open to the Magistrate is either to acquit the accused or adjourn the hearing of the case.

9. It was further contended that as a public servant like the Registrar of the High Court cannot personally attend to the case filed on his complaint, it will be most inconvenient to require his personal attendance. But it is to obviate such difficulties that the proviso to Section 247, Cr. P.C. has been enacted giving the Magistrate the discretion to dispense with the attendance of a public servant in suitable cases. The argument of inconvenience has, therefore, no force.

10. Finally it has been argued that as the Executive Officer had been absent on the six or seven previous hearings, his personal attendance must be deemed to have been dispensed with and that in any case 25-11-1953 was fixed only for the decision of the application dated 14-10-1953. The mere fact that the Executive Officer was absent on the previous hearings does not mean that his personal attendance had been dispensed with.

The facts of the case reported in AIR 1954 Ajmer 31(2) (E) referred to above were much stronger and yet it was held that it could not be presumed that the personal attendance of the complainant had been dispensed with. The case was, no doubt, adjourned to 25-11-1953 for the consideration of the application dated 14-10-1953, but it does not follow that the attendance of the complainant was dispensed with. The Magistrate had already made an order calling for the documents for the production of which alone the application dated 14-10-1953 was made and one fails to understand that further consideration was to be given to the application.

11. On acquittal a valuable and substantial right accrues in favour of the accused and, except for strong reasons, there should be no interference u/s 439, Cr. P.C.

No such reasons are shown to exist in this case. The absence of the Executive Officer was not accidental or due to reasons beyond his control.

12. The revision has no force and is dismissed.