
(1970) 04 CAL CK 0004
In the Calcutta High Court
Case No : Criminal Revision No. 109 of 1970

Chandi Charan Paul

APPELLANT

Vs

State

RESPONDENT

Date of Decision : 21-04-1970

Acts Referred:

Criminal Procedure Code, 1898 (CrPC) — Section 253(1), 253(2)
Penal Code, 1860 (IPC) — Section 409

Citation : (1971) 2 ILR (Cal) 414

Hon'ble Judges : Sarma Sarkar, J; R.N. Dutt, J

Bench : Division Bench

Advocate : Mrityunjay Palit, for the Appellant; D.C. Roy and Ashoke Kumar Sengupta, for the Respondent

Judgement

R.N. Dutt, J.—The Petitioner is the accused in a case instituted by the opposite party before a Magistrate at Hooghly. He has obtained this Rule for quashing the proceeding against him in the said Court.

2. The opposite party filed a complaint against the Petitioner on April 11, 1962, and the Petitioner was summoned u/s 409 of the Indian Penal Code. The case dragged on and ultimately it came to Sri S. Bakshi, Magistrate, First Class. He fixed June 5, 1969, for evidence, but on that date the complainant opposite party was absent and the learned Magistrate discharged the Petitioner u/s 253(2) of the Code of Criminal Procedure. Subsequently, the opposite party filed a petition before the learned Magistrate for revival of the case, and the learned Magistrate after hearing both sides revived the case and fixed August 27, 1969, for appearance of the Petitioner for trial. The Petitioner thereafter appeared before the learned Magistrate, but subsequently obtained this Rule for quashing.

3. Mr. Palit submits that the learned Magistrate was no more in season of the matter having discharged the Petitioner u/s 253(2) of the Code and so he was not competent to revive the case. Mr. Roy, who appears for the complainant opposite party, however, submits that since there was no consideration on

merits, the learned Magistrate was within his rights to revive the case. The position in law in respect of this matter is now well-settled. If a Magistrate discharges an accused after consideration of the matter on merits, he is no more competent to revive the case and to re-hear the same. But if he has made the order of discharge without consideration of the merits of the matter, he is competent to revive the case and rehear the same. It follows, therefore, that if a Magistrate discharges u/s 253(1) of the Code, he cannot revive and, if he discharges u/s 253(2) of the Code, he can revive only when the order of discharge is made without consideration on merits either in respect of the facts alleged or in respect of the law involved in the matter. We find that in this case there was an order of discharge without consideration of the merits of the matter either in respect of facts or in respect of law and so the learned Magistrate was competent to revive and re-hear the case.

4. Under the circumstances, there is no reason to interfere with the order made.

5. The Rule is, therefore, discharged.

Sarma Sarkar, J.

6. I agree.