

(1950) 04 MAD CK 0037
In the Madras High Court

Excise Department

APPELLANT

Vs

Chota Hanmanthu

RESPONDENT

Date of Decision : 11-04-1950

Acts Referred:

Citation : (1951) CriLJ 514

Hon'ble Judges : Shripat Rao, J;M.S. Ali Khan, J

Bench : Division Bench

Judgement

1. This is an appeal submitted by a State against the order of acquittal passed by the Mag, of Alampur dated 13 4.1357 F.
2. The Mag. stated in his order that nobody was present on behalf of the Abkari Department, & as the accused was present & the case was one in which a summons was ordinarily to be issued, the case is dismissed for default u/s 219 , Hya. Cr. P.C., & the accused is acquitted.
3. Learned Advocate for applt. argued that the order of dismissal for default was contrary to law. He also states that a petn. for adjournment was sent through the Sub Inspector of Abkari, bit that he could not submit the same in Ct. in good time due to sickness of his wife.
4. After going through the provisions of Section 219, Hyd. Cr. P.C., we are of the opinion that the order of dismissal for default cannot be upheld. The proviso to the Section lays down that where the complainant is a public servant & his personal attendance is not required, the Mag. may dispense with his attendance & proceed with the case.
5. It is argued that 13th Isfandar 1357 P was fixed for the evidence of the accused & the office note in the file of the trial Ct. shows that the accused had taken no steps to summon the defence witnesses nor had filed list of any D. Ws. It is therefore contended that under the circumstances, the attendance of anybody on behalf of the State was not required at all. The accused is not present before us.

6. We agree with the contention that the attendance of the Abkari Prosecutor on the said date should have been dispensed with by the trial Ct. under the proviso of Section 219. We therefore accept the appeal, Bet aside the order of the trial Ct. & remand the case for further trial.