

**(1956) 02 KL CK 0004**  
**In the High Court Of Kerala**

Kannan Devan Hills Produce Co. Ltd.

APPELLANT

Vs

T.N. Madhavan Pillai

RESPONDENT

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**Date of Decision :** 06-02-1956

**Acts Referred:**

Criminal Procedure Code, 1898 (CrPC) — Section 247, 345, 447

**Citation :** (1956) CriLJ 1018

**Hon'ble Judges :** Koshi, C.J;Nandana Menon, J

**Bench :** Division Bench

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## Judgement

Koshi, C.J.—This revision petition is directed against the order of the Second Class Magistrate of Devi-colam, acquitting the accused in C, C. No. 157 of 1954 on his file, u/s 247, Criminal P.C. on the ground that the complainant in the case was not present on the date of that hearing. On 8-5-1954 Mr. Robert Walker, then General Manager of the Kannan Devan Hills Produce Company Ltd., Munnar, (here-in-after referred to as the Company) filed a complaint before the lower court against the accused in the case alleging that he had criminally trespassed upon a certain piece, of land at Munnar in the possession of the Company.

The Magistrate duly took cognizance of the offence and in due course, commenced the trial. After the complainant and two other witnesses were examined on the side of the prosecution, Mr. Robert Walker retired from the service of the Company and Mr. W. Wilson Mayne took his place as General Manager. Mr. Robert Walker's retirement was on 29-3-1955 On 7-6-1955 his successor filed a memo before the lower court stating that Mr. Walker retired on the aforesaid date and that he had taken Mr. Walker's place.

The address of the complainant is also set out in that memo and that reads: The Kannan Devan Hills Produce Company Ltd., Munnar, represented by W. Wilson Mayne. The defence took exception to Mr. Mayne's name being substituted in the complaint in place of the name of Mr. Walker. The learned Magistrate upheld the objection and further held that as the case cannot be proceeded with in the absence of Mr. Walker, the accused was entitled to be acquitted u/s 247 Criminal

P.C. Orders were made accordingly and Mr. Mayne has brought this revision on behalf of the Company impugning the correctness of the order of acquittal.

2. The offence of criminal trespass is punishable u/s 447, I.P.C. and the punishment prescribed for the offence is imprisonment of either description for a term which may extend to three months, or with fine which may extend to five hundred rupees, or with both. The offence is therefore triable as a summons-case and Section 247, Criminal P.C. occurring in Chap. XX thereof, dealing with the trial of summons-cases by Magistrates, enacts as follows:

If the summons has been issued on complaint, and upon the day appointed for the appearance of the accused, or any day subsequent thereto to which the hearing may be adjourned, the complainant does not appear, the Magistrate shall, notwithstanding anything hereinbefore contained, acquit the accused, unless for some reason he thinks proper to adjourn the hearing of the case to some other day.

3. There is a proviso added to this, but that (as it stood on the date of the impugned order) does not concern us here. It may, however, be noticed in passing that the proviso as amended by Act 26 of 1955 (which came into force from 1-1-1956) enables a court to exempt any complainant from personal attendance, whereas before the amendment the exemption could only have been granted to a complainant who is a public servant. The lower court based its view that Mr. Mayne's name cannot be substituted for that of Mr. Walker on the ground that Mr. Walker had filed the complaint, on his own behalf and not on behalf of the Company and for the further reason that substitution of one complainant by another though a controversial matter is seen allowed only in cases of death and not in a case like the present where an agent or servant leaves the service of his principal or master.

We are afraid the learned Magistrate has strained much to bring the case within the rule of the decision in - "Tej Singh v. Kalloo" AIR 1948 Oudh 15 ( V 33) (A), where a complaint of criminal trespass by an agent with respect to that offence committed against the principal's property was held to have been instituted by the agent on his own behalf. Whatever the nature of the complaint in that case be, with reference to the complaint in the present case we have no hesitation to hold that Mr. Walker filed the complaint for and on behalf of the Company.

The complainant's name is given in the cause title of the complaint as "the Kannan Devan Hills Produce Company Ltd., Munnar represented by the present General Manager, Robert Walker". The complaint is signed by Mr. Walker, General Manager, Kannan Devan Hills Produce Company Ltd., Complainant. in his sworn statement on the complaint Mr. Walker stated that the Company was in possession of the land trespassed upon and that the complaint was in respect of that trespass. This position was later reiterated in his evidence as P. W. 1.

In the circumstances we cannot agree with the lower court that the complaint in the present case was like the one in the case cited, filed by itself concedes that

an agent can file a complaint on behalf of his principal under a power of attorney. It is in our opinion puerile to argue that when a duly constituted attorney files a complaint on behalf of his principal, a successor in the place of the attorney cannot prosecute the case or that he cannot get himself substituted in place of the former.

According to the decision, if the attorney files a complaint on his own behalf the principal runs the risk of the former leaving his service and abandoning the case. The implication can only be that when the complaint is by an attorney the principal himself can continue the case or another attorney can come in, when the original attorney is replaced in the office of the attorney by the latter.

4. The offence of criminal trespass is a compoundable offence and the first table appended to Section 345, Criminal P.C. shows that the person by whom that offence can be compounded is the person in possession of the property trespassed upon. According to the Penal Code (vide Section 11), the term "person" includes any Company or Association or body of persons, whether incorporated or not and that definition is extended for application to the provisions of the Criminal P.C. by the latter part of Section 4(2) of the latter Code.

As such, the only "person" who could compound this offence is the Company and the Company can do it only through its accredited agent. An agent who has severed his connection with the Company will not be competent to compound the case. The view that Mr. Mayne who took Mr. Walker's place and who could have compounded the offence cannot prosecute the case from the stage where Mr. Walker left it is one which does not commend itself to us as correct at all. The lower court's view that substitution was not possible has therefore to be held to be bad.

5. All the same we are not satisfied that this is a proper case for us to interfere with the order of acquittal passed by the learned Magistrate. In the first place Mr. Mayne had not made any application to get himself substituted in place of Mr. Walker as the Company's accredited agent and manager. To file a memo before the court that he has replaced Mr. Walker was not the proper procedure to be adopted to get himself substituted in Mr. Walker's place. He should have made a stamped application in that behalf. A stamp duty of eight annas was levied on the complaint petition and the normal procedure when substitution, as asked for here, is sought is to file an application in that behalf.

We find that in the case in AIR 1946 Oudh 15 ( V 33) (A), that is what the complainant's master did. Secondly, apart from the reasons stated in the Magistrate's order, the order-sheet and the progress diary of the case show that even if legally permissible the Magistrate was not prepared to allow the substitution without the power of attorney by the Company in Mr. Mayne's favour being produced in court. The court was entitled to insist on its production and no power of attorney was produced in the case. The Magistrate was therefore right in refusing substitution without the new General Manager

producing the power of attorney granted in nib favour by the Company,

6. Further, the occurrence complained of took place on 27-4-1954, the complaint was filed on 8-5-1954 and the final order was passed on 8-7-1955. In the meantime the ease had seen not less than sixteen adjourned hearing dates and at least on seven such dates the complainant's accredited agent was absent. The court condoned the absence every time on application being made by the complainant's counsel.

7. To our minds, to interfere with the order of acquittal in a case like this would be mere harassment of the accused, particularly when the complainant Company has already moved the Civil Court for redress.

Justice is not one-sided. It has many facets and we have to draw a nice balance between conflicting rights and duties. While it is incumbent on us to see that the guilty do not escape it is even more necessary to see that persons accused of crime are not indefinitely harassed" -per Bose, J. in - Machander Vs. State of Hyderabad, We do not consider that the argument that it is necessary that the Company should proceed in the criminal court in order to make an example which will be noted by other intending trespassers as worthy of consideration by us.

Having regard to all the circumstances - the nature of the case, the time that has elapsed, the fact that there was no proper motion for substitution, that no power of attorney was produced and that the Company has already approached the Civil Court for redress - we think it sufficient to point out the lower Court's error without making any further order. In - "Nagayya. In re", 2 Weir 306 (C), where the accused in summons case was acquitted by reason of the complainant's absence, a Division Bench of the Madras High Court acted likewise.

8. Though for reasons different from those given by the Magistrate his order is affirmed and the revision is accordingly dismissed.