
(1989) 11 RAJ CK 0006

In the Rajasthan High Court

Case No : Criminal Leave to Appeal No. 190 of 1988

Krishi Upaj Mandi Samiti Fatehnagar

APPELLANT

Vs

Vardi Chand and Another

RESPONDENT

Date of Decision : 25-11-1989

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 247, 256, 413

Citation : (1990) 1 WLN 262

Hon'ble Judges : Shyam Sunder Byas, J

Bench : Single Bench

Final Decision : Allowed

Judgement

S.S. Byas, J.—The appeal is directed against the order/judgment of the Munsif and Judicial Magistrate, Railmarga dated April 18, 1988 by which the appellant's complaint was dismissed and the accused Vardichand was acquitted of the offences punishable u/s 4, 28(1) and 28(2) of the Rajasthan Agricultural Produce Market Act, 1961 (here in after to be referred to as 'the Act')

2. Material facts may be briefly recapitulated. The Krishi Upaj Mandi Samiti Fatehnagar, District Udaipur lodged a complaint through its Secretary Shri Mahavir Singh in the court below on 14-3-1985 against three accused for offences punishable Under Sections 4 and 28(1) and (2) of the Act. Out of three accused, two of them viz. Fateh Lal and Laxman Singh were arrested during trial. Accused Vardichand faced the trial. The complainant closed evidence, vide note on 28-11-1987. The accused's statement u/s 413, Cr. PC was recorded on 13-12-1987 and he was called upon to lead evidence in his defence. On 1-2-1988, he closed his evidence. Thereafter final arguments were heard on 20-2-1988 and the case was adjourned for pronouncement of judgment to 27-2-1988. On 27-2-1988, the judgment was not pronounced. On 22-3-1988 the learned Magistrate passed an order for rehearing the arguments of the parties. On 1-4-1988 arguments could not be heard as the members of the Bar were on strike. On 18-4-1988 when the case was fixed for re-hearing of the final

arguments, neither the complainant nor his Counsel appeared. The Magistrate there upon passed the impugned order dismissing the complaint u/s 256, Cr.PC and acquitting the accused of the offences he was called upon to take trial. Aggrieved against the aforesaid order/judgment, the complainant has come up in appeal.

3. I have heard Mr. M.C. Bishnoi learned Counsel for the appellant. Mr. B.R. Mehta learned Counsel for the accused-respondent and the learned Public Prosecutor.

4. It was contended by Mr. Bishnoi that the entire approach of the learned Magistrate is palpably erroneous and unsustainable in law. Both the parties had led evidence and final arguments were also heard and the case was adjourned for pronouncement of judgement. In these circumstances, even if the learned Magistrate desired to re-hear the final arguments and the complainant was not present, the proper course was to decide the case on merits and it was highly improper to dismiss the complaint u/s 256, Cr.PC. Reliance in support of the contention was placed, on *Hakim Singh v. Bachchu Lal* 1956 RLW 10 and *C.R. Alwares v. Habool and Ors.* 1959 AIR 100. It was on the other hand contended by Mr. Mehta that the impugned order is perfectly legal and justified because neither complainant nor his counsel was present on 18-4-1988 when the arguments were to be heard again. I have bestowed by thoughtful consideration to the rival submissions.

5. Admittedly both the parties had led their evidence and final arguments were also heard by the learned Magistrate on 20-2-1988 and the case was thereafter fixed on 27-2-1988 for pronouncement of the judgment. The judgment was not pronounced on that day. It is highly insensible on the part of the learned Magistrate not to pronounce the judgment on 27-2-1988 when he had heard the final arguments a week ago on 20-2-1988. On 18-4-1988 when the case was fixed for re-hearing of the final arguments, neither the complainant nor his counsel appeared. The proper course for the learned Magistrate was to hear the arguments of the accused and decide the case on merits.

6. It is true that Section 256, Cr.PC authorises the Magistrate to dismiss the complaint on account of the non-appearance of the complainant. But this section contains a proviso which lays down that where the personal attendance of the complainant is not necessary, he may dispense with his attendance and proceed with the case. This proviso makes the provision of dismissing the complaint discretionary in some way. The Magistrate is expected to exercise this discretion with care and caution and not arbitrarily just to get rid of the case. It is not necessary that there should always be an application on behalf of the complainant for dispensing with his attendance. If the presence of the complainant is not required for any purpose to proceed with the case, the Magistrate as a rule should proceed to decide the case even though no application is made for dispensing with the complainant's attendance.

7. The object of Section 256 in the Criminal Procedure Code is to deal with dilatory tactics of the complainant. But Section 256 Cr.PC was never intended to be used in a case where the stage was either for the pronouncement of the judgment or hearing of the final arguments. The legislature never intended that the order of acquittal u/s 256 should be passed as a matter of routine and when ever the complainant is absent, the complaint should be inevitably dismissed. Whether the complaint should or should not be dismissed depends upon the facts and circumstances arising in a given case. When the final arguments are to be heard and the complainant absents himself, it is an arbitrary exercise of the discretion if the Magistrate instead of deciding the case on merits dismissed the complaint u/s 256. Cr.PC. Apart from that, there is no provision in summons case for the hearing of arguments though invariably the arguments are heard as it has become a convention to hear the arguments.

8. In the instant case, the facts as narrated above are quite alarming. Arguments were already heard and the case was fixed for delivery of judgment. And yet the learned Magistrate desired to hear the arguments agains and dismissed the complaint because the complainant failed to put appearance. The Magistrate should have heard the arguments of the accused and should have decided the case on merits. He adopted a mechanical process without applying the mind as to whether the discretion vested in him u/s 256 Cr.PC should or should not be exercised. He passed the impugned order in a routine and mechanical manner.

9. In the two decisions cited above, it was observed that dismissing the complaint and acquitting the accused u/s 247 (now 256) Cr.PC without taking into consideration whether the presence of the complainant is necessary or not is an arbitrary exercise of the discretion vested in the Magistrate.

10. For the reasons aforesaid, this appeal is allowed. The impugned judgment/ order dated 18-4-1988 of the court below is set aside. The case will go back to the learned Magistrate to decide the case on merits as indicated above. The parties are directed to put appearance in the court below on 8-1-1990.