

(1945) 04 AHC CK 0038
In the Allahabad High Court
Case No : Criminal Revision No. 29 of 1945

Mian Tej Singh

APPELLANT

Vs

Kalloo

RESPONDENT

Date of Decision : 30-04-1945

Acts Referred:

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

Citation : (1945) 04 AHC CK 0038

Hon'ble Judges : Madeley, J

Bench : Single Bench

Advocate : Kalbe Mustafa, for the Appellant; S.N. Ahmad, for the Respondent

Final Decision : Dismissed

Judgement

Madeley, J.—This order will cover four revision applications arising out of four complaints filed on the 24th July, 1944, against Kallu, Mst. Kalsi, Shiva Bakhsh and Mahabir by Sat Saran Lal, general agent of Mian Tej Singh, the present applicant. The complaints were to the effect that these four persons, Kallu, Mst. Kalsi, Shiva Bakhsh and Mahabir had, after being ejected, once more taken illegal possession of their holdings. The prosecution evidence in all the cases was finished on the 16th September, 1944. In the cases of Shiva Bakhsh and Mst. Kalsi the 20th September, 1944, was fixed for defence evidence and in the cases of Mahabir and Kallu the 29th September, 1944, was fixed for evidence. On these dates applications were made by Mian Tej Singh, who was present, in which he stated that Sat Saran Lal has left his service and is no longer under his control; therefore his (Mian Tej Singh's) presence should be noted in the order-sheet, and the cases should proceed. The application was rejected by the Honorary Magistrates before whom the cases were proceedings. There was a difference of opinion between the Magistrates, and therefore the opinion of the Magistrate who held that Section 247, Cr. P. C. applied and that the accused must be acquitted, prevailed. Four applications in revision were filed against the orders of acquittal

before the Sessions Judge, who dismissed them. These applications in revision are against the orders of dismissal.

2. The applicants' learned Counsel argues that Mian Tej Singh was the real complainant and he was present, and that Section 247, Cr. P. C. has no application. He also argues that substitution of one complainant for another can be made.

3. Let us see first whether Sat Saran Lal or Mian Tej Singh is the complainant with- in the meaning of Section 247, Cr. P. C. In my opinion there can be only one view on this question. Sat Saran Lal states in his complaints that he has the permission of Mian Tej Singh for filing the complaints. He filed no power-of-attorney signed by Mian Tej Singh. In other words he filed the complaints on his own behalf but with the permission of his master. It cannot be said that an estate agent is not adversely affected by offences committed in respect of the estate of which he is in charge. They are injuries to him as well as to his master. He can therefore be a complainant. If he is appearing on behalf of his master and not on his own behalf, he must file a power-of-attorney. If it were conceded that Mian Tej Singh was the complainant in the present cases within the meaning of Section 247, Cr. P. C. and Sat Saran Lal was not the complainant, then the accused should have been acquitted long ago, since no valid appearance had been put in by Mian Tej Singh or on his behalf up to the date when he made the application, the order upon which is under revision. The case has been argued as if some injustice were being done to Mian Tej Singh by the order of the lower Court, I do not think, however, that it can be said that any injustice is done to him, because it is on account of his own act that the present position has arisen. It was open to him either to file a complaint himself in person or to give Sat Saran Lal or some other person a power-of-attorney to enable him to file it on his behalf or to allow Sat Saran Lal to file it on his own behalf. He adopted the latter course. By doing this he ran the risk of Sat Saran Lal, who was the complainant, leaving his service and abandoning the case. It is not correct also to say that Mian Tej Singh is deprived of all remedy. The only remedy he is deprived of is that in Criminal Court. His civil remedy remains. The arguments that it is necessary for a taluqdar to proceed in a criminal Court in order to make an example which will be noted by other tenants is not worthy of legal consideration.

4. Coming to the question of substitution all the cases relate to substitution of names on the death of the complainant. The applicant's learned Counsel cites *Jitan Dusadh v Damoo Sahoo* AIR 1916 Pat, 152, *Aland Rao v. Cadi* AIR 1933 Nag, 72 and *Madho Chaudhury v. Turab Mian* AIR 1915 Cal. 263. In the last named case a servant died and another servant was allowed to carry on the complaint. In the present case, however, no one has died. The complainant has merely wilfully absented himself because he has left the service of the taluqdar. The argument that he is civilly dead is clearly wrong. He is alive, and the fact that Mian Tej Singh has no longer any control over him does not amount to his death in any sense of the word. Learned Counsel for the opposite-party puts the

matter in this way, which appears to me to have some force in it. He says that when Mian Tej Singh allowed Sat Saran Lal to make a complaint on his own behalf, he was allowing him to take over all his rights and liabilities in respect of this matter. If he had died, these rights and liabilities would have reverted to the taluqdar, but they cannot revert when he is still alive. Therefore no question of substitution arise.

5. The last argument urged before me is based upon 2 Weir's Reports, 306, in which it is stated "Where a complainant has done all that is necessary for him to do to establish his case, the complaint ought not to be dismissed in default of his attendance on an adjourned date, unless the Magistrate has seen fit for sufficient reasons to require his attendance specially on that date." With great respect I fail to find anything to justify this decision in the section itself, which provides that when the complainant is absent on such an adjourned date the Magistrate shall, notwithstanding anything hereinbefore contained, acquit the accused, unless for some reasons he thinks proper to adjourn the hearing of the case to some other day. The implication seems to be that in the ordinary course acquittal is compulsory, but if the Magistrate has some special reason for making an exception to the rule, he can do so. At any rate in the present case it cannot be said that everything had been done by the complainant which was necessary. The defence witnesses had to be examined by the accused and cross-examined by the complainant and the case had to be argued.

6. The opposite party's learned Counsel points out that Mian Tej Singh is not even a party to these cases and had no "locustandi" to file a revision against the acquittals.

7. This, however, would not prevent this court from interfering under Sections 435-439 Cr. P. C. in a fit case.

8. I dismiss these applications in revision.