

(1966) 10 GUJ CK 0006
In the Gujarat High Court
Case No : Criminal Appeal No. 562 of 1965

State of Gujarat

APPELLANT

Vs

Kanbi Nanji Kanji

RESPONDENT

Date of Decision : 11-10-1966

Acts Referred:

Criminal Procedure Code, 1898 (CrPC) — Section 190(1), 247, 249

Citation : AIR 1967 Guj 228 : (1967) CriLJ 1328

Hon'ble Judges : V.B. Raju, J

Bench : Single Bench

Advocate : H.M. Chokshi, Govt. Pleader, for the Appellant; H.L. Patel, for the Respondent

Judgement

(1) This is an appeal by the State against the acquittal of the respondent u/s 247 of the Cri. Pro. Code. The accused was charged for an offence u/s 24 of the Industries Development and Regulation Act, 1951, for committing breach of Rule 15 of the Bombay Cement Control Order, 1959. The learned Magistrate passed an order ordering that "the complainant is absent and so accused is acquitted u/s 247 Cr. P.C.". Section 247, Cr. P.C. reads as follows:-

"247. 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 herein before contained, acquit the accused, unless for some reasons he thinks proper to adjourn the hearing of the case to some other day:

Provided that where the Magistrate is of opinion that the personal attendance of the complainant is not necessary, the Magistrate may dispense with his attendance and proceed with the case."

Section 249 Cr. P.C. reads as follows:-

"249. In any case instituted otherwise than upon complaint, a Presidency

Magistrate, a Magistrate of the First Class, or any other Judicial Magistrate specially empowered in this behalf by the State Government in consultation with the High Court, may for reasons to be recorded by him, stop the proceedings at any stage without pronouncing any judgment either of acquittal or conviction, and may thereupon release the accused."

This is a case of an accusation by a police officer in his official capacity. Section 190 Cr. P.C. makes a distinction between complaints and reports of Police Officers. When there is a complaint by a private person, section 190(1)(a) Cr. P.C. applies, while when there is a report of the police officer, Section 190(1)(b), Cr. P.C. applies. It is only in cases where Section 190(1)(a), Cr. P.C. applies that Section 247 Cr.P.C. applies and in cases falling under S. 190 1 (b) and 190(1)(c), Cr. P.C. 249 Cr. P.C. applies. In the present case, although the police officer wrote the word `complaint" in his accusation, it must be treated as a report of the police officer falling u/s 190(1)(b), Cr. P.C. The proper section to be applied in the present case is Section 249 Cr. P.C.

(2) The order of the learned Magistrate of acquittal passed u/s 247, Cr. P.C. is, therefore, set aside, and the matter is sent back to the learned Magistrate to pass an order u/s 249, Cr. P.C. and it is also open to him to order costs u/s 344(1-A) Cri. P.C. against the defaulting party.

(3) Appeal allowed.