

(1975) 10 RAJ CK 0032
In the Rajasthan High Court
Case No : Criminal Appeal No. 1059 of 1971

State of Rajasthan

APPELLANT

Vs

Bhawani Shanker Bus Service and Others

RESPONDENT

Date of Decision : 29-10-1975

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 247
Minimum Wages Act, 1948 — Section 22, 22B

Citation : (1975) WLN 461

Hon'ble Judges : M.L. Shrimal, J

Bench : Single Bench

Final Decision : Allowed

Judgement

M.L. Shrimal, J.—This appeal has been preferred by the State of Rajasthan against an order of the Sub-Divisional Magistrate, Banswara dated January 20, 1971 dismissing the complaint case No. 10 of 1970 on account of the default in appearance of the complainant Labour Inspector, Dungarpur and acquitting the accused u/s 247 Cr.P.C.

2. The material facts are that the Labour Inspector, Dungarpur Radheyshyam Sodani made a complaint against the respondents Bhawani Shanker and others under Sections 22 and 22B of the Minimum Wages Act, 1948. The case was registered on January 22, 1970. All the accused were served by February 6, 1970. On February 25, 1970 a copy of the complaint was given to the accused persons & the case was adjourned for April 16, 1970. On April 16, 1970 the learned Magistrate was out of station and as such the case could not be taken up and was adjourned to May 28, 1970. On May 28, 1970 the complainant was present but the accused persons were absent and as such the case was adjourned to June 26, 1970, On June 26, 1970 again the accused persons were absent. On August 14, 1970 though the complainant was present but the accused persons were absent and bailable warrants were ordered to be issued against them. Thereafter the accused persons presented themselves before the

court, and the order for issuing the warrant was withdrawn. On September 17, 1970 though the complainant was present, the accused were absent. On October 20, 1970 the learned Magistrate was busy in some other work and as such the case could not be taken up. On November 18, 1970 though the complainant was present yet the accused were not present as such the case could not be taken up. On December 23, 1970 the learned Magistrate was out of station and as such the case could not be taken up. On this date also though the complainant was present yet the accused were absent and bailable warrants in the sum of Rs. 200/- were ordered to be issued against them, and the case was adjourned for January 20, 1971. On 20-1-1971 neither the accused nor the complainant were present in the court, A telegram was received by the court purported to have been issued by the complainant and making a request to the effect that due to the Government work he had to go out on tour and as such the case may be adjourned, The learned Magistrate found the reason for adjournment to be insufficient and dismissed the case and acquitted the accused u/s 247 Cr.P C.

3. Being aggrieved by the verdict of acquittal the State of Rajasthan has come up in appeal.

4. After the admission of the appeal, a notice was issued to the respondents stating that the appeal filed by the State of Rajasthan challenging the order of acquittal dated January 20, 1971 passed in favour of the respondents by the learned Magistrate, Banswara in Criminal Case No. 10 of 1970 was admitted and that it would be taken up for hearing on June 15, 1972. The notice of this date was served on the respondent Maganlal on June 12, 1972. The notice of other respondents were not served. As such fresh notices were issued and ultimately the notices issued by the office on November 22, 1972 fixing the date of bearing as December 20, 1972 were served on the remaining respondents on December 15, 1972 but the respondents have not chosen to appear and contest the appeal. It has been heard in their absence.

5. I have heard learned Counsel Shri Bhansali appearing on behalf of the State and have come to the conclusion that this appeal must be allowed.

6. The principal reason which has persuaded me to come to this conclusion is that on almost all hearings except one or two the accused persons were absent and the complainant was throughout present except on January 20, 1971 on which date the accused persons were acquitted. Admittedly the complainant in this case is a Government Servant who was busy in some other official work and his personal presence could have been exempted. More over his absence was not material in the sense which should have led the learned Magistrate to dismiss the case by snap judgment. The power to dismiss the case is undoubtedly there. When the complainant in a case instituted on a complain is absent in a summons case, but that power must be judicially exercised and it must be seen & considered having regard to the facts & circumstances of the case whether the presence of the complainant was essential on that date to proceed with the case or it could be dispensed with. It will be pertinent to note that the complainant

was throughout diligent in prosecuting the case right from the date it was filed on January 22, 1970 and he was present on all the ten hearings between the date of the institution of the complaint and the date of dismissal of the case. The court could have legitimately come to the conclusion that the personal attendance of the complainant was not necessary on January 20, 1971 as the case would not have made any progress even if he was present on account of the absence of the accused in the court and as such he ought to have adjourned the case instead of dismissing the same.

7. The result is that the appeal is allowed and the order dated January 20, 1971 passed by the learned Sub-divisional Magistrate, Banswara dismissing the complainant's case and acquitting the accused is set aside and the case is sent back to the Chief Judicial Magistrate, Banswara with a direction that he shall proceed with the case or transfer it to any other court sub-ordinate to him for being tried according to law in light of the observations made above.