
(1976) 01 RAJ CK 0005
In the Rajasthan High Court
Case No : Criminal Appeal No. 160 of 1972

State of Rajasthan	Vs	APPELLANT
Mahadev and Others		RESPONDENT

Date of Decision : 15-01-1976

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 247
Penal Code, 1860 (IPC) — Section 160
Police Act, 1861 — Section 34

Citation : (1976) WLN 22

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

Bench : Single Bench

Final Decision : Dismissed

Judgement

M.L. Jain, J.—This appeal is directed against the order of the learned Munsif Magistrate No. 2, Jodhpur, dated 14-9-71 by which she acquitted the respondents of the offence u/s 34 of the Police Act, 1861, and u/s 160, Indian Penal Code.

2. I have heard arguments of the learned public prosecutor and the learned Counsel for the respondents. I have also perused the record of the case.

3. The SHO Udaimandir, Jodhpur, filed a complaint in the court of the Municipal Magistrate that on 30-5-71, at about 5.30 p.m., the Head Constable Deshrajt accompanied by three other constables was on patrol duty in area inside the Nagori-gate, Jodhpur and he found the respondents, six in number, fighting and thereby causing breach of peace The traffic was also jammed. Upon this complaint, a case was registered on 10-7-71. On 14-9-71, the learned Magistrate acquitted the accused of the offence u/s 160, I.P.C. because the complaint failed to appear. Though the learned a Magistrate made no order regarding acquittal u/ s 34, Police Act, 1861, it shall be deemed that she also acquitted the respondent of that charge as well. Aggrieved by this order, the State has come up in appeal.

4. The learned public prosecutor submitted that the respondents were riotous and were fighting in a public thoroughfare and the learned Magistrate should not have dismissed the complaint in the manner she did. u/s 247 of the Code of Criminal Procedure, no doubt the magistrate has a discretion to acquit the accused for non-appearance of the complainant but this discretion requires judicial exercise thereof and the Magistrate should proceed with the attendance and proceed with the case where he considers and is satisfied that the personal attendance of the complainant is not necessary. I agree with the contention raised by the learned Counsel for the State that the order of acquittal made by the learned Magistrate u/s 247; Cr.P.C. has been made without giving proper consideration whether the presence of the complainant was necessary at the date of hearing but it is such a petty matter which occurred in May 1971 about five years ago that I do not feel inclined to set aside the order of the learned Magistrate and remand the case for retrial.

5. I, therefore, dismiss the appeal.