

(1979) 01 SHI CK 0005
In the High Court Of Himachal Pradesh
Case No : Criminal Appeal No. 23 of 1972

The State of Himachal Pradesh

APPELLANT

Vs

Shri Chaudhari Ram

RESPONDENT

Date of Decision : 12-01-1979

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 247
Forest Act, 1927 — Section 32, 33

Citation : (1979) ShimLC 303

Hon'ble Judges : H.S. Thakur, J; D.B. Lal, J

Bench : Division Bench

Advocate : K.D. Sud, for the Appellant; P.N. Nag, for the Respondent

Final Decision : Dismissed

Judgement

D.B. Lal, J.—This appeal is brought by the State of Himachal Pradesh against the order of acquittal passed by the Judicial Magistrate Ist Class, Hamirpur u/s 247 of the then Code of Criminal Procedure. The facts of the case are, that the Respondent Chaudhari Ram was stated to have encroached upon a part of forest land and had also illicitly cut a few forest trees. As it was stated, he committed an offence under Sections 32/33 of the Indian Forest Act for which a case was sent up to the Court of the Magistrate. The complainant was the Forest Department. On 9-12-1971 the case was called and although the accused was present, the complainant was found absent. The case was dismissed for default and the accused was discharged. According to the Magistrate it was a case u/s 247 of the Code of Criminal Procedure being a summons case on a complaint and as such the Magistrate had no choice but to acquit the accused u/s 247 of the Code of Criminal Procedure. The parties have not contended that legal proposition, but the grievance of the Appellant State is, that the case was called at 10.38 a.m. although thrice and since no body appeared on behalf of the complainant the Magistrate proceeded to dismiss the complaint.

2. It has been stressed by this Court at quite a few occasions, that the

Magistrates in complaint cases should not dismiss the complaint on default by calling the case during the early part of the day. Obviously they do so to show more disposal and thereby cause not only harassment to the complainant but often pass orders resulting in miscarriage of justice. In complaint cases especially those filed by public servants, it is not unusual that the complainants are busy in performing public duties and as such are delayed in reaching the Courts. If in these cases the Magistrates call for the cases earlier in the day with an idea to dismiss the cases for want of appearance, they no doubt add to their disposal, but cause great difficulties for the complainants very often resulting in miscarriage of justice. Shri K.D. Sud, the learned Counsel for the Appellant in this connection referred to us Chapter I-F of Volume III of the Rules and Orders of the Punjab High Court applicable to this Court. Rules 2 and 3 of Chapter I-F are relevant. It was emphasised that in applications for revision of orders dismissing complaints or cases instituted on complaint, by reason of the absence of the complainant, it is frequently urged that the complainant was not called or that the case was dismissed very early in the day, or that the Magistrate being on tour, the complainant had no, or insufficient, notice of the place of sitting. Accordingly, the instructions were issued for guidance to the Subordinate Courts that the Magistrate should not dismiss the complaints or cases instituted on complaints without giving complainants full opportunity for appearance. Ordinarily, if a complainant is absent when his case is first called on, his case should be called on again later, and the time of dismissal should always be noted on the record. In the instant case these instructions were not followed. The time noted in the order sheet is 10.38 a.m. which is rather pretty early although the case was called thrice. As such the order of dismissal of the complaint made by the learned Magistrate although may not be held to be strictly illegal, yet it was made in direct disregard of the instructions issued by the High Court.

3. Another significant feature connected with the instant case was that on the very same day i.e. 5-12-1971 the Forest Prosecutor Vidya Sagar moved an application before the Magistrate. In that application he specifically averred that he was busy in departmental inquiry and, therefore, did not attend the court at 10 a.m. and actually attended at 11.15 a.m. but the case was called at 10.38 a.m. and the complaint was dismissed. Vidya Sagar, therefore, requested the learned Magistrate to re-consider the case and to review his previous order. The learned Magistrate, however, considered his application on 10-1-1972 but refused to review his order specifically holding that it was a summons case and the complaint was dismissed for non-appearance of the complainant and hence the order operated in acquittal of the accused u/s 247, Code of Criminal Procedure. As such he was unable to review the order of acquittal.

4. Since the appeal is filed against the two orders, Shri Sud contended that this Court while sitting in appeal can give its own verdict. In fact the learned Counsel solicited for an order of remission of the case in his favour and wanted that the circumstances were made out u/s 247, Code of Criminal Procedure whereby the learned Magistrate could exercise his judicial discretion of adjourning the case to

some other date for the appearance of the complainant. In that contingency it was not incumbent upon the part of the learned Magistrate to have passed the order of acquittal. That being so, what we have to consider is, as to whether it would be appropriate at this stage to remit the case for fresh trial when the offence was stated to be committed some time in the year 1968 when a report was submitted by one Om Parkesh, demarcation Darogha and near about 10 years have lapsed since then. Remitting the case at this stage would amount raking up the case after 10 years and the offence is rather petty. If the Respondent has really committed a tress-pass, one has to see if tree-pass is still continuing and in that contingency can evict him in due process of law. The order of acquittal itself was passed in the year 1971 and so 8 years have passed since then.

5. We do not consider it necessary that the order of acquittal be set aside at this stage and fresh inquiry be resorted to. Accordingly we dismiss the appeal.