
(1965) 09 AHC CK 0042
In the Allahabad High Court
Case No : Criminal Appeal No. 2382 of 1963

The Town Area Committee of Gopiganj	APPELLANT
Vs	
The State	RESPONDENT

Date of Decision : 13-09-1965

Acts Referred:

Criminal Procedure Code, 1898 (CrPC) — Section 247, 417(3)
Criminal Procedure Code, 1898 (CrPC) — Section 247, 417(3)
Criminal Procedure Code, 1898 (CrPC) — Section 247, 417(3)

Citation : (1965) 35 AWR 705

Hon'ble Judges : M.H. Beg, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

M.H. Beg, J.—The Appellant, Town Area Committee, Gopiganj, prosecuted the Respondents for an alleged offence u/s 185 of the U.P. Municipalities Act. The complainant's evidence was completed on 21st August, 1963 and the case was adjourned to 6th of September, 1963 for the evidence of the accused Respondents. On that date the learned Magistrate trying the case passed the following order:

Complainant is absent. Complaint is dismissed in default and the accused discharged.

Against this order, the complainant has come up before me after obtaining special leave to appeal u/s 417 (3) Code of Criminal Procedure. The order purports to be an order of "discharge" which was not the correct term to use for an order which can be passed u/s 247 Code of Criminal Procedure in a summon's case trial. This was a summons case trial and no charge is framed in such cases. Nevertheless, the learned Magistrate used the word "discharge." Such an order has to be interpreted as an order of acquittal u/s 247 Code of Criminal Procedure. Interpreting (it; as an order of acquittal, I hold that an appeal after obtaining special leave to file appeal lies to this Court.

2. A perusal o the order sheet indicates that, although the case was adjourned to 6th September, 1963, for the evidence of the accused Respondents, yet, it is not clear whether the case was either called up for hearing or whether the counsel for the complainant was present. The order should have 3tated that the case was called up for hearing and neither the complainant nor its counsel was present. If the counsel for the complainant was absent, the learned Magistrate should have applied his mind in order to determine whether this was a case in which the personal attendance of the complainant was not necessary and the benefit of the proviso was to be given to the complainant or not. An order u/s 247 Code of Criminal Procedure is an order which has to be passed after applying the mind to the provisions of the section and giving reasons for the decision arrived at. The above mentioned order of the learned Magistrate discloses that the order was passed without duly applying mind to the law and without giving any reasons. I, therefore, set aside the order of acquittal and send back the case for retrial from the stage at which the illegal discharge, which I interpret as an acquittal, took place. The District Magistrate of Varanasi may send this case to the Magistrate concerned or any other Magistrate who has jurisdiction to try the case.