

(1932) 08 MAD CK 0047
In the Madras High Court

Tolladagu Musalayya and Others

APPELLANT

Vs

Mateli Ranga Rao

RESPONDENT

Date of Decision : 12-08-1932

Acts Referred:

Citation : AIR 1933 Mad 98 : 140 Ind. Cas. 322 : (1932) 36 LW 641

Hon'ble Judges : Bardswell, J

Bench : Division Bench

Judgement

Bardswell, J.—The six petitioners are the accused in C.C. No. 206 of 1931 on the file of the Sub-Magistrate of Polavaram. The complaint against them has been brought by a private party who is the respondent to this petition, as to offences punishable under Sections 147, 323 and 341, I.P.C.

2. A charge sheet has previously been filed by the police against the petitioners on the same facts of offences punishable under Sections 147 and 323, I.P.C. The Sub-Magistrate took the case on file but, before any evidence was taken, the Prosecuting Sub-Inspector withdrew from the prosecution u/s 494, Criminal P.C. The Magistrate then signed an order on a printed form by which the accused were declared to be acquitted. The form used was No. 80 which is intended for withdrawals and acquittals u/s 248, Criminal P.C., the 248 being altered to 494. The petitioners have taken the point before him that the respondent's complaint could not be inquired into under the principle of autrefois acquit. The Magistrate however held that the petitioners had in fact only been discharged in the earlier case. Against his decision as to that the petitioners have now come up on revision.

3. There is no doubt but that the petitioners should have been discharged and not acquitted in the earlier case. It was one that was triable as a warrant case and as no charge had been framed, Clause (a), Section 494, was applicable and not Clause (b). It is urged however for the petitioners that as the Magistrate, however mistakenly or unintentionally, had recorded an order of acquittal, they must be deemed to have been acquitted. Attention is called to Shankar

Dattatraya v. Dattatraya Sadashiv AIR 1929 Bom. 408. Therein there is cited with approval a Patna case Ram Mahato v. Emperor AIR 1921 Pat 311, in which it was held that Section 403, Criminal P.C., makes no distinction between acquittals after trial and acquittals under Sections 247, 345 and 494 of the Code and that, as long as an order of acquittal u/s 247 stands, Section 403 bars a second trial on the same charge, no matter whether the order of acquittal is good or bad, legal or illegal. What however was actually decided in that case was that an acquittal u/s 247 was a bar to a second trial. The only order that could have been passed under that section was one of acquittal and the point taken was that it should not have been applied before the accused had even been served with summons. That the Magistrate intended to acquit is beyond doubt. Here however the case is very different. The only legal order that the Magistrate could pass on allowing the withdrawal was one of discharge; and that he meant to pass such an order is shown by the note of the docket in his own writing and over his initials, that the accused were discharged. It has been held in *Sriramulu v. Veerasalingam* AIR 1915 Mad 23, that an order of discharge has to be taken as an order of acquittal when, in the circumstances, "an order of acquittal was the only one that could legally be passed. Conversely I am of opinion that an order that purports to be one of acquittal has to be regarded as one of discharge when, under the provision of law that was applied, only a discharge order could be passed, and especially when the Magistrate had expressly shown that it was his intention to pass such an order by the note which he made on the docket and when the word "acquitted" was printed in a printed form, which he no doubt signed inadvertently thinking that it was in accordance with his note on the docket.

4. It has been argued, that, as the case has now been found to fall u/s 341, I.P.C., it was only a summons case and so Clause (b), Section 494, was applicable and the order of acquittal was correct. What however has to be looked to is not what view can be taken of the case now but how it was treated at the time of the withdrawal. Further I gather that the Magistrate does not propose to deal with the case only u/s 341, I.P.C., but rather intends to add that section to Section 147 and Section 323.

5. I think that there might be a printed form for withdrawals u/s 494, Criminal P.C., containing both the words "acquitted" and "discharged," the one written over the other, so as to allow of the scoring out of whichever of the two words is, in the circumstances, unsuitable. The petition is dismissed.