
(1922) 11 MAD CK 0016
In the Madras High Court

Venkatrama Aiyar

APPELLANT

Vs

Sundaram Pillai and Others

RESPONDENT

Date of Decision : 15-11-1922

Acts Referred:

Criminal Procedure Code, 1898 (CrPC) — Section 247

Citation : AIR 1923 Mad 439 : (1923) 17 LW 229 : (1923) 44 MLJ 119

Hon'ble Judges : Wallace, J

Bench : Division Bench

Judgement

Wallace, J.—The first point for decision in this" case is whether the lower Court had any jurisdiction to acquit the accuser u/s 247 of the

Code of Criminal Procedure. Perusal of the lower Court's proceeding shows clearly that the accused was charged u/s 430, I.P.C. a warrant case

offence, that the lower Court tried the accused under the procedure laid down for the trial of warrant cases, but eventually framed a charge u/s

426, I.P.C. a summons case offence, but still proceeded with the trial under warrant case procedure, recalling the prosecution witness for

examination, for further cross-examination and then eventually acquitted accused u/s 247 of the Code of Criminal Procedure on the ground that the

Complainant (Petitioner) was absent on the adjourned date of hearing. Petitioner's case is that the lower Court having elected to try the case by

warrant case procedure, had no power to act u/s 247 of the Code of Criminal Procedure, which applies only to cases tried under summons case

procedure.

2. No doubt Section 247 appears in the Chapter headed ""Of the trial of summons cases"" and not in the Chapter headed ""Of the trial of warrant

cases,"" but in my opinion that does not settle the point at issue Section 247 seems to me intended to lay down a general principle that a person charged with a summons case offence is entitled in law to an acquittal if the complainant is absent; and I cannot see why this right should be denied to him simply because the Magistrate has adopted a particular procedure in the trial of the case. Ex hypothesi in such contingency, the complainant has so exaggerated his case that the Magistrate had to try it as a warrant case, whereas, if the complainant had not exaggerated it, and the Magistrate had tried it as a summons case ab initio the acquittal on the ground of complainant's absence, could have been perfectly legal. I cannot see any justification either in law or in reason why accused should lose this right to demand an acquittal merely because the complainant exaggerated the case against him. To hold otherwise would be to allow a pure technicality to negative a substantial legal right. If any conflict arises between technicalities and the legal rights of an accused person undoubtedly the latter must prevail.

3. I find no reported cases directly in point. That reported at *Rajnarain Koonwar v. Lala Tamoli Raut* ILR (1884) C. 91 was a case in which the Magistrate purported to pass an order u/s 247 of the Code of Criminal Procedure in respect of a warrant case offence, which was clearly illegal.

The case reported in *Queen Empress v. Papadu* ILR (1884) Mad. 454 , lays down that when a Magistrate finds that a warrant case charge fails, he is not prevented from then and there trying the accused for a summons case offence, which he finds to have made out, under the procedure for trying summons cases. I take it that this means that, when running through the trial of a warrant case, the Magistrate is satisfied that only a summons case charge will stand, the rest of the trial though technically a continuation of the warrant case trial is really a summons case trial. In the case reported in *Gangasaran v. Emperor* 41 M.L.J. 316 , the question decided was that a case begun under warrant case procedure should be continued under that procedure and the applicability of Section 247 of the Code of Criminal Procedure to cases so tried was not considered.

4. The general principle must be that the right of the accused to benefit u/s 247 of the Code of Criminal Procedure does not depend on the procedure which the Magistrate chose to adopt and was constrained to adopt by the complaint as laid, but on the nature and class of the offence

for which he is being tried, at the time of the complainant's failure to appear in Court. I find therefore nothing illegal in the lower Court's procedure.

5. The next point taken is that the petitioner had good reasons for not appearing at the hearing of 16-1-1922. Petitioner was well aware that the

hearing was going on on that day at Abhiramam and since he was served with summons for that day and place. His plea that he could not find the

Magistrate at Abhiramam is disingenuous, since the Magistrate was holding his Court at the usual place where he used to hold it when camping at

Abhiramam. The plea that 16-1-1922 was a holiday was not a sound excuse for petitioner not appearing to prosecute his case, and a legal reason

for the Magistrate refusing to act under the peremptory provisions of Section 247 of the Code of Criminal Procedure.

6. I am not prepared to interfere in this case and dismiss the petition.