

**Reg. Vs. Devama and Somshekhar**

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**SooperKanoon Citation :** [sooperkanoon.com/327976](http://sooperkanoon.com/327976)

**Court :** Mumbai

**Decided On :** Dec-08-1875

**Reported in :** (1877)ILR1Bom64

**Judge :** West and ;Nanabhai Haridas, JJ.

**Appellant :** Reg.

**Respondent :** Devama and Somshekhar

**Judgement :**

1. The accusation made against the accused in this case constituted it a warrant-case falling under the provisions of Section 213 et seq. of the Code of Criminal Procedure. The Magistrate, Mr. Middleton, after an arrangement had been come to between the parties, divided the property between them and dismissed the complaint. By 'dismiss the case' we understand the Magistrate to have meant the same thing as is indicated by Section 215 of the Code of Criminal Procedure, where it says that the Magistrate, if he finds that no offence has been proved against the accused person, shall discharge him.' 'Dismissal of a complaint' is a phrase properly applicable only to a summons case under Chapter XVI of the Code, and incapable of being applied, as Section 212 shows, to any complaint, 'except in so far as it refers to a summons case.' The provisions of Section 215 are highly useful in many cases. They enable a Magistrate, when circumstances make it expedient, to dispose of an accusation without proceeding to an actual conviction or acquittal where a strict application of the criminal law would be

undesirable. But these provisions are open to abuse, and, to guard against their perversion, it is explained (Explanation II) that a discharge is not equivalent to an acquittal, and does not bar the revival of a prosecution. In the present case, therefore, the course pursued by Mr. Middleton, and which seemed to him the more just and expedient, does not bar the renewal of the proceedings, if to Mr. Jervoise or the Magistrate of the District such a renewal should appear absolutely necessary or highly desirable.

2. The composition entered into between the parties cannot affect the revival of the prosecution if that should otherwise be thought necessary. House breaking in order to commit theft is not an offence which, according to Section 214, Indian Penal Code, can be legally compounded, and a withdrawal from the prosecution in such a case has not, according to Section 188 of the Code of Criminal Procedure, the effect of an acquittal. Section 212 of the Criminal Procedure Code cannot be applied to the case, because it is not a summons-case, and there is no such provision as that contained in Section 212 in the following chapter on warrant-cases.

3. There is no occasion for any order on the part of this Court. The case stands free for the exercise of the Magistrate's discretion, which he will naturally not exercise to the supersession of his predecessor's order, unless it should appear that justice requires him to adopt that course.