

In Re: S.E. Dubash

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Court : Mumbai

Decided On : Jun-17-1908

Reported in : (1908)10BOMLR628

Judge : Basil Scott, C.J. and ;Chaubal, J.

Appeal No. : Criminal Application for Revision No. 110 of 1908

Appellant : In Re: S.E. Dubash

Disposition : Application dismissed

Judgement :

Basil Scott, C.J.

1. The complainant in this case brought a charge of assault against the accused under Section 352 of the Indian Penal Code.
2. The first hearing appears to have been fixed for the 14th of February 1908, and upon that day the summons not having been served, the complainant appeared before the Magistrate and asked that the accused's name might be altered in the summons. The case was then adjourned until the 20th of February for service upon the accused of the amended summons.
3. On the 20th of February the case was called on and the complainant did not appear.
4. The Magistrate thereupon recorded this order :-'Struck off, Section 247.'
5. We think it is clear from the terms of that order that the Magistrate must have had Section 247 before him and have intended to act under that section. But we cannot accede to the argument of Mr. Weldon that the words 'struck off' on the Magistrate's record are the same as 'acquit.' No doubt the Magistrate ought to have recorded an acquittal. But he did not do so.
6. Then later in the day the complainant appeared and asked that the complaint might be restored to the file. The Magistrate said that could not be done but that he was at liberty to file a fresh complaint.
7. A fresh complaint was then filed and came on in the month of March when objection was taken on behalf of the accused that an order had already been passed under Section 247 which was an order of acquittal, and therefore the Magistrate could not now convict the accused upon the charge before him.
8. The Magistrate acceded to that argument and then recorded an order of acquittal and discharge.
9. We are now asked by the complainant in our revisional jurisdiction to interfere with those orders of the Magistrate.
10. We think that neither order was correct in form, and we can only judge of the effect of the order by its

form. The Magistrate was not entitled under Section 247 to record the order 'structure off, ' nor was the Magistrate, in a case which he had not tried, entitled to record the order of acquittal on the second complaint. The most he could do would be to record an order of discharge.

11. We have come to the conclusion that the Magistrate ought under the peremptory provisions of Section 247 to have acquitted the accused on the 20th of February. This he did not do.

12. The question is whether we should now allow the complainant to go again to the Police Court and try to procure the punishment of the accused for pushing him on the shoulder in the course of a voyage.

13. We are of opinion that it is a case in which we ought not to interfere at all and we therefore dismiss the application.

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