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**State Vs. D. Sequeira**

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**SooperKanoon Citation** : sooperkanoon.com/348018

**Court** : Mumbai

**Decided On :** Nov-23-1955

**Reported in** : AIR1956Bom414; 1956CriLJ721

**Judge** : Shah and ;Vyas, JJ.

**Acts** : Code of Criminal Procedure (CrPC) , 1898 - Sections 4, 4(1), 155, 173, 173(3), 190 and 247; Bombay Police Act, 1951 - Sections 33 and 131-A

**Appeal No.** : Criminal Appeal No. 1168 of 1955

**Appellant** : State

**Respondent** : D. Sequeira

**Advocate for Def.** : H.H. Brito, Adv.

**Advocate for Pet/Ap.** : A.A. Mandgi, Asst. Govt. Pleader

**Judgement** :

**Shah, J.**

1. The Sub-inspector of Police Nagpada police station obtained the permission of the Presidency Magistrate 2nd Additional Court, Bombay Central to investigate the commission of an ottence punishable under Section 33 (w) read with Section 131-A of Bombay Act 22 of 1951, viz. falling to obtain a Hcence to .keep a place of

public entertainment at flat No. 11 on the 2nd floor of Mymmoon Manzil situated at Spence Road, Byculla.

It appears that the sanction was given and thereafter the Sub-Inspector of Police Investigated into the commission of the offence. It may be mentioned that the breach of Section 33 (w) of Bombay Act 22 of 1851 is a non-cognisable offence.

After the investigation was completed the Sub-Inspector sent a report to the Presidency Magistrate 2nd Additional Court, Bombay Central, Bombay stating that the respondent had failed to obtain a license from the Commissioner, of Police under Section 33 (w) of Bombay Act 22 of 1951 and had thereby committed an offence punishable under Section 131-A of the Bombay Act 22 of 1951 and therefore process be issued against the respondent and she be dealt with according to law.

The learned Magistrate accordingly issued summons against the respondent. When the case was posted for hearing on 8-6-1955 before the learned Magistrate the police prosecutor in charge of the case asked for an adjournment on the ground that the complainant viz. the Sub-inspector of Police Nagpada police station was absent.

The learned Magistrate declined to grant the adjournment after hearing the pleader for tne respondent and the police prosecutor. The learned Magistrate then proceeded to acquit the accused observing that the respondent was absent and the complainant was absent. Against the order of acquittal the State of Bombay has preferred an appeal to this Court.

2. presumably the order was passed by the learned trial Magistrate under Section 247, Criminal P. C. Evidently there had been no trial of the charge against the respondent.

Again under Section 247, Criminal P. C., 'if the summons has been issued on complaint and upon the day appointed for the appearance of the accused, or any day subsequent thereto to which the hearing may be adjourned, the complainant does not appear, the Magistrate shall, notwithstanding anything hereinbefore

contained in Chapter XX acquit the accused unless he thinks it proper to adjourn the hearing of the case to some other day'.

It Is evident that the jurisdiction of a Magistrate to acquit the accused without a trial can be exercised under Section 247 if proceedings have been started on a complaint and summons has been issued. In the present case the proceedings were started not on a complaint but upon the report of a police officer.

Section 4, Clause (h), Criminal P. C. defines a complaint as meaning an allegation made orally or in writing to a Magistrate with a view to his taking action under the Code that some person whether known or unknown has committed an offence but it does not include the report of a police officer.

Even if, therefore, the requirements of Clause (h) of Section 4 are satisfied, If the indictment is made by a report of a police officer that some person, known or unknown, has committed an offence, it would not fall within the definition of the word 'complaint'.

3. In the present case, we have before the Court the report of a Police Officer. Under Section 155, Criminal P. C., it is open to a Police Officer to ask for sanction of a Magistrate to investigate into a non-cognisable offence and once the police officer obtains the sanction of a Magistrate to investigate into a non-cognisable offence, he was entitled to exercise the same powers in respect of the Investigation, except the powers to arrest without a warrant as an officer in charge of a police station may exercise in a cognisable case.

If a cognisable case has been investigated by a police officer, evidently he can submit a charge-sheet under Section 173, Criminal P. C. If a non-cognisable offence has been investigated with the sanction of a Magistrate under Section 155, Criminal P. C. he can also submit a charge-sheet or a report.

In our view, the report made by the Sub-in-spector of Police, Nagpada Police Station, on which the learned Magistrate took cognisance was a report within the meaning of Section 173, Criminal. P. .C. and it was not a complaint. The learned. Magistrate had, therefore, no jurisdiction to acquit the respondent under Section

247, Criminal P. C.

If the learned Magistrate thought that in the circumstances of the case the request of the Police Prosecutor for an adjournment should not be granted, he should have called upon the Police Prosecutor to lead evidence and he should have disposed of the case on the merits and he could not acquit the accused because the complainant' failed to remain present in Court.

4. The order passed by the learned Magistrate is, therefore, set aside. The learned Magistrate will proceed with the case against the respondent according to law.

5. Order set aside.

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