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**State of Mysore Vs. Mahadevappa**

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**SooperKanoon Citation** : sooperkanoon.com/373966

**Court** : Karnataka

**Decided On :** Jan-15-1953

**Reported in** : AIR1953Kant146; AIR1953Mys146; ILR1953KAR329

**Judge** : Venkata Ramaiya and ;Balakrishnaiya, JJ.

**Acts** : Code of Criminal Procedure (CrPC) , 1898 - Sections 247, 417, 423 and 438; Mysore Prohibition Act - Sections 4 and 4(1)

**Appeal No.** : Criminal Appeal No. 51 of 1952-53

**Appellant** : State of Mysore

**Respondent** : Mahadevappa

**Advocate for Def.** : B. Basavalingappa, Adv.

**Advocate for Pet/Ap.** : C.S. Venkataswamy Naidu, Public Prosecutor

**Judgement** :

1. The Chitaldrug Police placed a charge-sheet against the respondent before the Second Magistrate, Chitaldrug, under Section 4(i) (a), Mysore Prohibition Act. When the case was pending, the prosecution applied to the Magistrate for amending the provision of the charge by the substitution of Section '4(1) (c)' of the same Act for Section '4(i)(a)'. The Magistrate having refused the prayer, the prosecution approached the District Magistrate to refer the matter under Section

438, Criminal P. C., to the High Court. The District Magistrate declined to make a reference and rejected the petition on 12-3-52. As the records were called for by the District Magistrate, the trial Court went on adjourning the case to several dates of hearing intervening the disposal, and the order sheet of 13-3-1952 reads thus: 'Accused absent, await orders 24-3-52.' On 24-3-52, the Magistrate dismissed the case at 11-30 A.M. acquitting the accused under Section 247, Criminal P. C. on the ground that the Prosecuting Inspector was not present. The present appeal is filed under Section 417, Criminal P. C. by the State of Mysore against that order.

2. The learned Public Prosecutor on behalf of the State urged that the discretion vested in the Magistrate under Section 247 is used erroneously and in the circumstances of the case the acquittal was unwarranted. These contentions are not without force. Section 247 empowers the Magistrate to acquit the accused for non-appearance of the complainant unless for reasons he thinks proper to adjourn the case to some other date. The discretion vested will, however, amount to misuse if the circumstances indicate that the Magistrate has attempted to clutch at the jurisdiction for merely disposing of the case. The affidavit filed in this case by the Prosecuting Inspector discloses that the prosecution was unaware of the receipt of the records from the District Magistrate, and moreover, that that usual time at which the Court was sitting being 11-30 A.M. he went into the Court at that hour and found that the case had been disposed of 'ex parte.' In the present case, the enquiry had reached some stage before the records were called for by the District Magistrate and the date 24-3-52 was fixed, not for trial but for awaiting the orders of the District Magistrate. Obviously, the prosecution was not expected to be ready for trial or to do any other thing on that date. The records are said to have been received on 13-3-52, and ordinarily the Magistrate should have, on 24-3-52, directed the parties to be ready on a further date to which the case might have been posted. Instead, he has improperly clutched at the jurisdiction under Section 247, Criminal P. C. and acquitted the accused.

Further, the case was taken cognizance of by the Magistrate on the Police report and there was indeed no 'complainant' as such in the case, and in that view, it is highly doubtful whether Section 247, Criminal P. C. could at all be made applicable, vide 19 Mys CCR 47 (A).

The case was disposed of at 11-30 A.M. It is not denied that the Court had other work for the day. It has been laid down by this Court that the application of Section 247) Criminal P. C. to effect a hasty disposal at the early stage when the day's work begins, amounts to misuse of discretion vested in the Magistrate. Vide 25 Mys HCR 380 (B) and 27 Mys HCR 38 (C).

The High Court has powers to set aside the order of acquittal when such order is not pass-ed on merits or when circumstances of the case indicate that the Magistrate has improperly exercised the jurisdiction vested in him to dispose of the case. The order of the acquittal by the learned Magistrate cannot therefore be sustained.

3. In the result, the appeal is allowed and the order of acquittal of the accused is set aside with a direction that the case C.C. 194 of 1951-52 may be taken on file and further proceedings conducted with a view to dispose of the case according to law.

4. Appeal allowed.

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