

Swaroop Singh Vs. Emperor

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Court : Allahabad

Decided On : Aug-20-1947

Reported in : AIR1948All135

Appellant : Swaroop Singh

Respondent : Emperor

Judgement :

ORDER

Harish Chandra, J.

1. A criminal complaint was brought against the applicant Sardar Swarup Singh by a man called P.C. Sharma under Sections 352 and 506, Penal Code. An offence under Section 352 is a summons case offence, while the one under Section 506 is a warrant case offence. The Magistrate, however, followed the procedure prescribed for the trial of a warrant case and proceeded with the trial and some evidence was recorded. On 4-5-1946 the complainant absented himself and the learned Magistrate passed an order dismissing the complaint in default and 'directing that the accused person be released, he also observed that the case appeared to be a case under Section 352, Penal Code, only. Soon afterwards a fresh complaint under the same two sections was brought by Sharma against the applicant who, however, contended that the complainant was, not entitled to bring a fresh complaint in view of the provisions of Section 403, Criminal P.C., The

learned Magistrate overruled this contention by an order passed on 21-5-1946. We are not concerned with the actual wording of the order dated 21-5-1946, but the effect of the order is that the contention of the applicant that a fresh complaint could not be instituted against him was rejected. He has now come up in revision from this order of the learned Magistrate and it is contended on his behalf that a fresh trial after the order passed by the Magistrate on 4-5-1946 directing that he be released is not legal.

2. If the case had been tried as a summonsa case, it is clear that the order passed by the Magistrate on 4-5-1946, in the absence of the complainant releasing the accused would be tantamount to an order of acquittal passed under Section 247, Criminal P.C., It has been held that the actual wording of an order passed under Section 247 is not of much consequence and even if a Magistrate uses the word 'discharge' or 'release', it would be deemed to be an order acquitting the accused in the absence of the complainant. But if this case was properly tried as a warrant case, the order would be tantamount to an order of discharge under Section 259 Criminal P.C., The question is what is the procedure to be followed in a case in which one of the offences is a summonsa case offence and the other is a warrant case offence. No provision has been made in the Code of Criminal Procedure as to the procedure to be followed in such cases. But as a warrant case offence cannot be tried as a summons case offence, it seems reasonable that in such a case the procedure prescribed for the trial of a 'warrant cape should be followed. This is the view which has been taken by the Calcutta, Madras and Bombay High Courts.

3. In *Raj Narain Koonwar v. Lala Tamoli Raut* ('85) 11 Cal. 91, there were two charges, one triable as a summons case and the other as a warrant case. The two charges were based exactly on the same evidence and the same circumstances. On the date to which the hearing was adjourned the complainant was absent and the Deputy Magistrate made an order purporting to be an order under Section 247. It was held that this was not a proper order and that what the Magistrate should have done was to have made an order under Section 253 for discharge.

3a. In *Raghavalu Naicker v. Singaram* 5 A.I.R. 1918 Mad. 371, a complaint was preferred against a person for offences under Sections 352 and 504, Penal Code. The former offence was triable as a summons case and the latter as a warrant case. The Magistrate discharged the accused owing to the absence of the complainant on the date of hearing and a fresh complaint was preferred in respect of the same offences. It was held that the procedure to be followed in such a trial was the one provided for the trial of a warrant case; and that the discharge of the accused did not amount to an acquittal with respect to the offence under Section 352, Penal Code, and that it was not a bar to his subsequent trial for the same offence.

4. In *Kanji v. Pandurang Keshav* ('40) 27 A.I.R. 1940 Bom. 413, a similar question arose and it was held that in such circumstances if the Magistrate tried the two offences together, he must follow the procedure laid down for the trial of warrant cases and that he could not, whilst proceeding with the two cases together, treat them separately.

5. I see no reason to differ from the view taken in these cases and, in my opinion, the order passed by the Magistrate on 4-5-1946 cannot be regarded as an order of acquittal under Section 247, Criminal P.C. It must be treated as an order of discharge passed under Section 259 of the Code. It would thus appear that Section 403, Criminal P.C., is no bar to the institution of a fresh complaint against the accused. The application is accordingly dismissed.