

Ram Narain Vs. Mool Chand and ors.

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Court : Allahabad

Decided On : Nov-06-1959

Reported in : AIR1960All296; 1960CriLJ552

Judge : A.N. Mulla, J.

Acts : [Code of Criminal Procedure \(CrPC\) , 1898](#) - Sections 247, 417, 417(3), 438, 439, 439(5) and 561A; [Child Marriage Restraint Act, 1929](#)

Appeal No. : Criminal Ref. 13 of 1959

Appellant : Ram Narain

Respondent : Mool Chand and ors.

Advocate for Pet/Ap. : P.N. Chaudhary, Adv.

Judgement :

ORDER

A.N. Mulla, J.

1. This is a reference made by the Additional District Magistrate (Judicial), Rae Bareli, recommending that the order of dismissal dated the 4th of October, 1958, passed by a Sub-divisional Magistrate in a complaint case be set aside.

2. The facts of the case which led to this reference are as follows :

One Ram Narain filed a complaint in the court of the Sub-divisional Magistrate, Dalmau, Rae Bareilly, against the five opposite parties alleging that they had contravened the provisions of the Child Marriage Restraint Act. It was alleged that Ram Kumar, opposite party No. 4, who is the son of Kali Babu, opposite party No. 2, was married to Shrimati Rajeshwari alias Gogee, opposite party No. 5, who is the daughter of Mool Chand, opposite party No. 1. It was further alleged in this complaint that both Shrimati Rajeshwari and Ram Kumar were about 14 years of age at the time of marriage and the remaining three opposite parties celebrated this marriage in contravention of the provisions of the Child Marriage Restraint Act.

The complaint was filed in the month of June 1958 and the opposite parties were served on the 12th of September, 1958. The next hearing fixed in the case was the 4th of October, 1958, and when the case was called the complainant was absent and so the complaint was dismissed for default under Section 247 Cr. P. Code. It is, however, apparent from the record that the witnesses summoned by the complainant were present and the complainant himself appeared before the Court shortly afterwards and paid the diet money to the witnesses at the orders of the Court.

3. The complainant felt aggrieved against this order of dismissal of his complaint and he went up in revision under Section 435, Cr. P. Code before the District Magistrate, Rae Bareilly. In his grounds of revision the complainant contended that he and his counsel were present in the court on the date fixed, but as the complainant suffered from hernia, he suddenly got an attack outside the court and so when the case was called in the beginning of the day, the complainant and his counsel could not attend the court.

It was alleged that due to this attack the complainant could not even call his counsel and so there was no one to represent him before the Magistrate and tell him the reason for the absence of the complainant. Another point stressed by him was that the dismissal of the complaint in the early hours of the day was improper. It was then mentioned in this application of revision that because this order of dismissal was tantamount to an acquittal under Section 247 Cr. P. Code, the complainant had no other remedy but to file this application of revision.

4. This revision was heard by the Additional District Magistrate (Judicial), Rae Bareilly, and he came to the conclusion that the order passed by the Magistrate was illegal and improper. He, therefore, made a reference for setting it aside.

5. When I heard this reference the counsel for the opposite parties advanced two contentions before me on the basis of which he contended that this reference cannot be accepted. In the first place he contended that there was no impropriety or illegality in the order passed by the Sub-Divisional Magistrate and, therefore, the order of acquittal should not be disturbed. Secondly, he contended that under the amended provisions of the Code of Criminal Procedure, a right to appeal has been given to a complainant and if the complainant was aggrieved he should have approached the High Court and filed an appeal under Section 417 (3) Cr. P. Code.

The revision filed by him was not entertain-able in view of the express provisions of Section 439(5) Cr. P. Code. The Additional District Magistrate was, therefore, incompetent to entertain this revision and the reference made by him is illegal, as he had no jurisdiction to make such a reference.

6. The counsel for the complainant on the other hand contended that Section 439(5) is not a bar to the filing of an application of revision by a complainant. He contended that the right to appeal given in the amended Section 417 of the Code of Criminal Procedure to the complainant is a supplementary right given to the complainant and it does not extinguish his right under Section 435/439 Cr. P. Code. He also contended that the order of dismissal of the complaint passed by the Sub-Divisional Magistrate was illegal and improper and in the interests of justice it should be set aside. Lastly, he submitted that even if it is held that the reference was made without jurisdiction, the High Court has ample powers under Section 561-A Cr. P. Code to set aside an order which has caused a grave injustice.

7. Three questions, therefore, emerge for decision in this case. The first question is, whether the order of dismissal passed by the Sub-divisional Magistrate is a proper and legal order. The second question is, whether the Additional District Magistrate was competent to entertain this revision and make this reference. The third and the last question is, whether it is a fit case in which I should exercise my

inherent powers under Section 561-A Cr. P. Code.

8. I proceed with the first question. The counsel for the opposite parties have not contended that the complainant was not present on the day before the Sub-Divisional Magistrate when his complaint was dismissed. They have also not Challenged the allegation that he suddenly suffered from an attack of hernia and so was unable to appear before the Court when the case was called upon. This is again not challenged that the case was called in the early hours of the day and later the complainant appeared before the Court and gave diet money to the witnesses who were summoned for that date. It is in the background of these facts that I have to assess whether the order passed by the Sub-Divisional Magistrate was illegal or not.

9. I will first quote Section 247, Cr. P. Code. It runs as follows :

'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, acquit the accused, unless for some reason he thinks proper to adjourn the hearing of the case to some other day :

Provided that where the Magistrate is of opinion that the personal attendance of the complainant is not necessary, the Magistrate may dispense with his attendance, and proceed with the case.'

A reading of the Section cited above shows that an order under this Section can be passed only when the complainant does not appear upon the day appointed for the appearance of the accused or any subsequent day. The provision further gives a discretion to the Magistrate that he can dispense with the attendance of the complainant, if in his opinion it is not necessary and he can proceed with the case. The question is as to what interpretation should be given to the phrase upon the day'.

I have given anxious thought to this question and I have come to the conclusion that the natural meaning of the word 'day' should be given to it and the word 'day' cannot be interpreted as that moment in the day when the case is called. In the first place it is one of the basic principles of interpreting statutes that natural meanings should be given to words and a Court can give another interpretation only when the natural meaning leads to absurd consequences which could not have been the intention of the Legislature and the other meaning which can be given to the words is far more consistent with the intention of the Legislature.

It cannot be doubted for a moment that the word 'day' means not the moment when the case is called, but the day on which the hearing is fixed. I am also of the opinion that the intention of the Legislature is in conformity with this meaning. Section 247, Cr. P. Code, was enacted so that the complainants should zealously prosecute their cases and they may not be given an opportunity to adopt dilatory tactics to harass an accused person.

This was safeguarded by making it necessary that they should be present on the date of hearing. I have not been able to find any other reason for this enactment. One other reason strikes me and it is that the procedure under Chapter XX of the Criminal Procedure Code, which deals with summons cases, relates to offences which are comparatively minor in character as compared to the warrant cases which are tried under Chapter XXI of the Criminal Procedure Code and to which a different procedure applies.

As these offences are of a minor character, the Legislature felt that the time of the Magistrates should not be unnecessarily wasted in deciding the cases that fell under Chapter XX and, therefore, the complainant should be penalized, if he does not show diligence in the prosecution of his case. The Magistrate, however, interpreted the word 'day' as that particular moment when the case was called.

No doubt there are some authorities which are in support of this interpretation and I will refer to them presently, but with all respect to the Judges who have given those decisions, I am unable to find a satisfactory reason for not giving the word 'day' its natural meaning. It seems to me to be basically unjust that the word 'day' should be interpreted as the moment when the roll call is made.

In my opinion the Legislature could not have contemplated when it enacted Section 247, Cr. P. Code that the complainant who is the aggrieved party and who wants to seek his redress from a court of law should be subjected to detention near the court room on all the hearing of the case for all the working hours till the Court rises for the day and if even on an urgent call of necessity or for a very valid and strong reason he leaves his post for a few minutes, the Court can without giving him even a reasonable opportunity to explain his momentary absence pass a final order, against which his only remedy was to file a revision under the old code and an appeal to the High Court with its permission under the existing Code -- a permission which is very rarely granted.

Surely the Legislature could not have intended to make the position of the complainant so insecure. His position could not have been worse than that of an accused in a major offence who is released on bail, for when such a case is called and the accused is absent but comes a few minutes later, the Courts do not cancel his bail, if he gives an adequate and sufficient reason for his absence. Where discretion is to be exercised by a Court, it has to be exercised after giving the person who commits a default an opportunity to explain the reason for his default.

The default is not committed by mere absence but by such absence for which no sufficient and reasonable cause can be shown. In other words the penalty in Section 247, Cr. P. Code, is for a default and not merely for the physical act of absence. The failure of the complainant to appear on the day of hearing does not merely mean that he was not present at the time when the case was called but it also embraces and implies that the complainant when he appeared later in the day or who was present earlier in the day could furnish no adequate reason for his absence at that moment.

It was perhaps for this reason that the Legislature used the word 'day', for if the complainant is delayed and is not present at the moment when the case is called, he may get an opportunity to offer his explanation for his being absent at the relevant time and it is then that the Court has to decide whether a default has been committed or not. This should also be remembered that so far as the complainant is concerned, an order passed under Section 247, Cr. P. Code, almost seals the

fate of his complaint.

Such an order is deemed to be an order of acquittal and Section 403, Cr. P. Code, is a bar in the way of the complainant for filing a fresh complaint. Where the consequences of an order are so grave the greater is the reason why the provisions of such a section should be strictly construed and the order of acquittal should be passed not in a hasty manner, but after due consideration.

10. There is one other thing which strikes me, which in my opinion indicates that when the Legislature used the word 'day' it meant the whole of the working hours of the day and not the moment when the case was called. A similar provision is made in the Code of Civil Procedure for dismissing cases in default under Order IX Rule 8. The words are :

'Where the plaintiff does not appear when the suit is called on for hearing, the Court shall make an order that the suit be dismissed.....'

It is, therefore, obvious that where the Legislature wanted the case to be dismissed on account of, the absence of a party at the time when the case was called, it stated so in express words. I fail to understand that if this was the intention of the Legislature in the case of dismissal of complaints under Section 247, Cr. P. Code also, why did it not express itself in these very words in which it expressed itself in the Code of Civil Procedure. The difference in the terminology is quite evident and there is an understandable reason for this difference.

Where the plaintiff's suit is dismissed for default no final order is passed against him and he can apply for restoration and also re-institute his plaint. He is only penalized to the extent that he will have to undergo the expenses of filing a fresh plaint. But as observed by me above, the harm done to the complainant by dismissing his complaint under Section 247, Cr. P. Code, is almost irrevocable and, therefore, the Legislature used the word 'day' so that the complainant if for some good and valid reason could not be present at the time when the case was called, he may be able to offer that explanation to the Magistrate.

11. I will now refer to the cases which support the view that the word 'day' used in Section 247, Cr. P. Code, can be interpreted to mean the moment when the case is called.

12. The first case is Kuttiyali v. Pari Makri, ILR 7 Mad 356. It is a Single Judge decision and Hutchins J. observed :

'The only point raised in this case is that a Magistrate, before acquitting an accused person under Section 247 for the complainant's default of appearance, is bound to wait till his Court is about to close for the day. I can see no foundation for this contention.'

The judgment of the learned Judge does not give any reasons at all. The second case is also a Madras case and it is Tonkya v. Jagannatha, ILR 49 Mad 883: (AIR 1926 Mad 1009). This is a Bench decision and it followed the decision cited earlier. Devadoss J. observed :

'The contention is that it is sufficient if the complainant appears at any time during the day, and that 'the day' means the ordinary working hours of the Court, i.e. from 11 a.m. to 5 p.m. If the contention is to hold good it would mean that the Magistrate has to wait till 5 p.m. before dealing With a case under Section 247. There is nothing in the section which would justify the construction that the words 'upon the day appointed for the appearance of the accused,' etc., mean any time before the close of the working day. In Order IX, Rule 8 of the Civil Procedure Code, the wording is, 'where the plaintiff does not appear when the suit is called on for hearing, the Court shall make an order that the Suit be dismissed,' etc. From this it is clear that the plaintiff should be present when the case is called on for hearing.

In the case of a complainant, the complainant should appear when the case is called on for hearing. The object of Section 247 is to prevent the complainant from being dilatory in the prosecution of the case, and if he does not care to be present when the case is called on, the accused is entitled to an acquittal unless the Magistrate chooses for reasons he thinks proper to adjourn the case. It may, no doubt, appear to be a hardship that a complainant who was present from 11 a.m. to 4-30 p.m. should have his case dismissed if he happens to be away for a few

minutes when the case is taken up, but the question is not whether there is hardship or not but what is the meaning of the section. The complainant is bound to be present on the day to which the case is posted, and if he wants to be absent during any portion of the day he should take the Court's permission for doing so. But, if he does not do so, he does so at his risk.'

I have cited a long extract in order to illustrate the line of reasoning adopted by the learned Judge when he came to the conclusion that the word 'day' in Section 247 means the moment when the case is called. With all respects to the learned Judge, I cannot accept this line of reasoning. I have already given my reasons why the terminology in Order IX, Rule 8, C. P. Code, is different from the terminology in Section 247, Cr. P. Code and in my opinion it is an error to interpret the word 'day' by the words used in the Code of Civil Procedure.

The learned Judge admitted that this interpretation can occasionally mean a great hardship to the complainant, but he came to the conclusion that if the complainant wants to be absent for a moment he should take the permission of the Court. It rather seems extraordinary to me that the complainant is reduced to the position of a student in a class. He wants to go out on an urgent call of nature or otherwise and he has to seek the master's permission to go out. Again, there may be cases where the complainant could not even seek this permission. As the facts of this case disclose the complainant suffered from a sudden attack of hernia and, therefore, it was not possible for him to go to the Magistrate and seek his permission to be away for some time.

If this interpretation is correct then the complainant must undergo far greater harassment than the accused. In my opinion this could not have been the intention of the legislature, for it would be a strange rule of law indeed where the aggrieved party is discouraged from seeking his redress from a court of law. Even with his best diligence he may unfortunately be absent at one particular moment for a reason not only good but beyond his control and yet his complaint might be dismissed finally by a Magistrate who is on the look out for such an opportunity and he has no redress left, and no opportunity is to be given to him even to explain his absence.

13. Waller, J., who was the other Judge in the above Bench case, agreeing with Devadoss J. observed :

'Indeed, I think that, as a rule, he (Magistrate) would be well advised to give a complainant whose case is called on early in the day, some latitude before he decides to apply Section 247. If however he decides to act at once, when a complainant fails to appear on his case being called on, I am clearly of opinion that he has jurisdiction to do so and that he is not obliged to wait till the close of the Court day before doing so.'

It appears from this extract that Waller J. realized the hardship which is involved in this interpretation and, therefore, he observed that it would be better that the complainant should be given some opportunity for offering an explanation before the final order is passed under Section 247, Cr. P. Code.

14. The third case in support of this view is also a Madras decision and it is in *Natera Naicker v. Mari Gramani* AIR 1948 Mad 45. Yahaya Ali J. observed :

'It will be apparent from the language of the section that when in a summons case the complainant does not appear, it is imperative on the part of the Magistrate to acquit the accused, unless there is a proper reason for adjourning the hearing of the case. It is not the case of the complainant that there was any such reason which the Magistrate was aware at the time he called the case and the complainant was absent. In those circumstances, there was no discretion in the matter; the Magistrate was bound by the statute to acquit the accused. Where, therefore, an order has been passed in conformity with statutory duty, it must be held to be a proper and correct order, and there can be no question of revising such an order merely because it would cause some hardship to the party.'

It would be seen from the extract that the learned Judge concedes that an adjournment should be given on a proper reason, but at the same time he is of the opinion that the moment the complainant is absent, there is a statutory duty to dismiss his complaint. With all respect to the learned Judge, there seems to be a basic conflict in this view to me. How is the complainant going to place a proper reason before the Court, if the Court will not give him any time or opportunity to do

so.

The complainant may have been coming by a train and on account of accident the train was delayed or the accused himself managed to detain him and so he could not appear at the right time when the case was called. A thousand other reasons which may be considered to be good and proper reasons can be imagined but if the word 'day' is to be interpreted as the moment when the case is called then the complainant is denied the opportunity to offer any reason howsoever good it might be for adjourning the case. The right of dismissal under Section 247, Cr. P. Code, therefore, cannot be exercised in the early hours of the day, if it is to be judiciously exercised at all.

15. These are the only cases which support the view that the complainant's case can be dismissed at the moment when it is called. There is a Bench decision of the Bombay High Court also in which this view has been accepted in a modified manner. This decision is *In re Jamnabai Meghji* AIR 1934 Bom 130. The Bombay view is that an order passed under Section 247, Cr. P. Code on those dates when the case was not to be heard and only an adjournment was to be given cannot be upheld and it must be set aside, Broomfield J. observed at page 132 :

'..... anything in the nature of a snap rollcall which has the effect of prematurely cutting short contested cases is, I think, not legitimate device, or at any rate it is a very unsatisfactory one. Despatch is a good thing but justice is a better.'

Divatia J., who was with Broomfield J. in this Bench observed at page 134 :

'But when the Magistrate states further that the applicant should not be allowed to put that as an excuse for her absence as she was bound to be present in Court till the case was postponed in the usual course, then, in my opinion, it would be an abuse of the practice, and would operate as a trap for the unwary, because if the roll call is to be made only for the purpose of postponing the cases, then an order made in the case of an accused for the issue of a warrant or in the case of a complainant for the discharge or acquittal of the accused, if by some chance the party is absent at the time of the roll-call, would be against the principles of natural justice.'

16. That the Magistrate have been abusing the provisions of Section 247, Cr. P. Code is a truism which cannot be controverted. A large number of Magistrates keep irregular hours and there is no fixed time when they come to courts. We have also special honorary Magistrates who come to courts at their convenience. It is a well known device which is 'adopted by some of the Magistrates for disposing of complaint cases though they usually come to court after midday, on one particular day they come at about 10 in the morning and start calling the cases.

Some of the complainants are absent and they are caught in this trap and the Magistrates have the satisfaction of disposing of work without doing any work. Unless the court hours of the Magistrates are fixed and cause lists are duly prepared and hung outside the court room, it is against the basic principles of natural justice to penalize the complainants because for a few minutes they were away from the court. That the Magistrates have been acting in this manner can be gathered from the observations made in some cases.

17. In *Mt. Soni v. Kishnomal Manghandas*, AIR 1939 Sind 75, the facts mentioned by the learned Judges were :

'.....the diary of the case shows that the order was a most improper order, that the case had been adjourned time after time when the complainant a woman, was present with her witnesses, and when the Magistrate without proper notice to her had changed his camp, the Magistrate took advantage of her absence and acquitted the accused under Section 247, Criminal P. C.'

In another case *Ram Nidh v. Ram Saran*, 26 Oudh Cas 282: (AIR 1924 Oudh 64), Ashworth J. observed :

'..... The order acquitting the accused on the grounds of the non-appearance of the complainant was improper in view of the fact that the complainant had appeared several times when the Court had not been sitting..... It is true that this Court will not ordinarily interfere in revision in the case of an acquittal, since the Local Government can appeal, but this rule does not properly apply to an acquittal under Section 247. Cr. P. C. and in any case the rule will not prevent interference by this Court when the acquittal is the result of an improper clutching at jurisdiction.'

It is not necessary to multiply these cases, for their numbers are legion. As observed by me above some of the Magistrates utilize the provision, of Section 247, Cr. P. C., as an axe to guillotine the complaint cases pending before them. In this case the facts clearly establish that there was no default committed by the complainant when his case was dismissed. He had brought his witnesses who were present and he himself was present but only on account of an attack of hernia he could not appear before the Court when the case was called.

If the Magistrate had only passed a provisional order and had not signed it till the close of the day, it was easy for him to consider the reason given by the complainant for his failure to appear earlier. But the desire to finish a case got the better of any other consideration and the Magistrate did not lose this opportunity of finishing a case. I am, therefore, satisfied that the order passed by the Magistrate was an Abuse of the process of law and was wholly an improper order.

18. In support of my view that such orders should be passed at the end of the day, I could find only one unreported criminal case. Strange as it may be, the case in favour of my view is also a Madras case, but was dissented from in ILR 49 Mad 883: (AIR 1926 Mad 1009), cited above, but a reference to it has been made in the body of the decision at page 886 (of ILR Mad) : (at p. 1010 of AIR), Devadoss J. observed :

'This case has been referred to a Bench by Wallace, J., by reason of the view taken by Jackson, J., in Criminal Revn. Case No. 229 of 1925. In that case Jac'kson, J. held that Section 247 must be strictly interpreted and the appearance of the complainant during any portion of the day was sufficient compliance with Section 247. With great respect, I am unable to agree with that view. We should not consider the hardship that may be caused to the complainant in construing the section. Instructions may be given to Magistrates not to dismiss cases under Section 247 unless they are satisfied that the complainant is keeping out of the way and to wait for a reasonable time to enable the complainant to appear, but the absence of such instructions would not be a ground for giving a forced construction to the very clear words of the section.'

19. I am in entire agreement with the view expressed by Jackson, J. in the Criminal Revision cited above. In my opinion the words of the statute should be strictly interpreted when they are capable of causing such immense damage to a complainant. It is conceded that great hardship may be caused to the complainants in giving the other construction, but for reasons which escape my grasp it was insisted that the words should not be given their natural meaning. Not only this view prevailed, but it was observed that giving the word 'day' its natural meaning would amount to a forced construction.

20. I may now refer to a decision of our own High Court given in a civil case. It is *Ram Shankar v. Ram Narain* : AIR1928 All301 . The principle of dismissal for default is the same and the mere fact that this decision is given under Section 151, C. P. Code will not make its reasoning inoperative for interpreting Section 247, Cr. P. Code. Dalai j. observed :

'I remember once the pronouncement of Mr. Justice Atkman in this Court that no orders of dismissal in default should be passed till the end of the day when the Court was rising because there could be no default until the Court rose for the day. In the present case, in my opinion, there was no default and the order of dismissal in default may be taken as a mistaken one and the Court had inherent power to rescind it as laid down in Section 151.'

The view expressed by Dalai J. was followed by Ghulam Hasan J. in *Badri Prasad v. Ambika Pershad*, 1940 Oudh WN 1086: (AIR 1941 Oudh 91). In this case also the plaintiff's case was dismissed between 10 and 11 in the morning and the plaintiff reached the Court 15 minutes later and he put an application for restoration. The learned Judge observed :

'I hold in this case, therefore, that the order of dismissal was entirely mistaken and should not have been passed. There was in fact no dismissal for default at all.....'

The decisions cited above support my view. In my opinion the punishment for default cannot be awarded unless the default is committed and this question cannot be determined in the early hours of the day, but only at the end of the day. The order passed by the Sub-Divisional Magistrate was, therefore, not only

improper, but in my view it contravened the provisions of Section 247, Cr. P. Code and it was illegal.

21. I have now to decide the second question, whether the Additional District Magistrate, Rae Bareli, was competent to entertain the criminal revision filed by the complainant and make a reference. On this point, I am of the view that the reference made to the High Court was not entertainable as the District Magistrate, Rae Bareli under the amended Criminal Procedure Code had no jurisdiction to entertain an application of such a nature. There is a unanimity of opinion amongst the various High Courts on this point. It is held in these cases that after the amendment of Section 417, Cr. P. Code, a right of appeal has been given to a complainant and so it is no longer open to him to seek his relief by filing an application of revision either before the District Magistrate or the Sessions Judge as Section 439(5), Cr. P. Code, is a bar to the entertainment of such a revision. Section 439 (5), Cr. P. Code reads as follows :

'Where under this Code an appeal lies and no appeal is brought, no proceedings by way of revision shall be entertained at the instance of the party who could have appealed.'

It cannot be denied that the applicant could have appealed against the order of acquittal passed by the Magistrate under the provisions of Section 417 (3), Cr. P. Code. That he did not do so because he was ignorant of the law cannot be a reason for not observing the law. The Additional District Magistrate was, therefore, not competent to entertain this application of revision and it naturally follows that the reference made by him is also incompetent. I may give reference to the various decisions given on this point.

The first decision is *Chairman, Village Panchayath, Nagathihalli v. N. Thimmasetty Gowda* AIR 1956 Mys 62. The second case is *Shiv Prasad v. Bhagwan Das* . The third case is *State of Bombay v. N. G. Tayawade* : AIR1959 Bom94 . The last case is a decision of our own High Court in *City Board Mussoorie v. Sri Kishan Lal* : AIR1959 All413 . It is not necessary for me to repeat the reasons given in these decisions, for I respectfully agree with the view taken in these decisions. In the Allahabad case cited above, Desai J. observed :

'Even if it be true that a revision application, which does not lie because of the bar imposed by Sub-section (5), filed by the aggrieved party can be treated as information, I consider that this course should be reserved for extraordinary cases and ordinarily the High Court should refuse to treat it as information.'

The Additional District Magistrate when he made this reference cited the extract given above in support of the reference, as in his opinion this was an extraordinary case. In my opinion the revisional powers of the High Court cannot be exercised even in these circumstances for what is forbidden by law cannot be transgressed. The bar created by Section 439 (5), Cr. P. Code cannot be circumvented on any ground. In my opinion when the High Court finds that a grave injustice has been committed through information conveyed to it by an application of revision or by a reference, the only way in which it can give relief is by exercising its inherent powers under Section 561-A, Cr. P. Code and not by stretching its jurisdiction under Section 439, Cr. P. Code.

22. The counsel for the applicant stressed before me that the Legislature did not intend to take away the existing right of seeking relief by means of filing an application of revision when it enacted Section 417 (3) of the amended Criminal Procedure Code. It was argued that an additional relief was given to the complainant and the earlier relief which existed, was not extinguished. In my opinion this contention is not maintainable. Where the words of the statute are unequivocal, they must be interpreted in the manner in which they are capable, of being interpreted and no other meaning can be given to it.

Section 439 (5), Cr. P. Code is quite unequivocal and it cannot be interpreted in two ways. It is only where the words of the statute are capable of being interpreted in two ways that the question of the intention of the Legislature becomes relevant. If the Legislature intended to give an additional relief, but it enacted something which was against that intention, the Courts of law cannot ignore the words of the statute and give them an unnatural meaning because the Legislature intended something else. In such a case it is for the Legislature to clarify its intention by making suitable amendments in the statute.

23. But even on merits I do not agree with the contention advanced before me that the Legislature wanted to give an additional relief to the complainant. I am of the opinion that the Legislature wanted to give the complainant a more secure footing for voicing his grievance against an order of acquittal and, therefore, it introduced Sub-section (3) in Section 417, Cr. P. Code. Even in the old Code the District Magistrate or the Sessions Judge could only make a reference under Section 438, Cr. P. Code, but they could not give any direct relief to the complainant. The Legislature considered this dilatory procedure as unnecessary and it took away the jurisdiction of the District Magistrate and the Sessions Judge to entertain such an application and vested it in the High Courts.

Apart from the delay which was caused by this procedure, there were other good reasons also for vesting this jurisdiction in the High Courts alone as is apparent from the provisions of the amended Section 417, Cr. P. Code, the right of appeal has been given to a complainant not only against an order of acquittal passed by a trial Court, but also by an appellate Court. The Legislature when it amended the provisions of Section 417, Cr. P. Code, had three objects in view. In the first place it wanted to give the complainant a fairer deal than was given to him under the old Code.

There were a large number of cases in which grave injustice was caused to the complainants because of illegal and unjustifiable orders of acquittal passed not only by the trial Courts but occasionally by the appellate Courts also. The High Courts, when such revisions came before them, on reference made by the District Magistrate or the Sessions Judge, or in a revision filed by the complainant seldom interfered with orders of acquittal even though these orders were erroneous and illegal. The majority of the Judges was disinclined to interfere with the orders of acquittal and there was almost a dogmatic approach that such orders should not be set aside.

There were, however, some Judges who realised that grave injustice was caused to the complainants by the orders of acquittal in some cases and they were inclined to interfere in such cases. This clash of opinion is well marked in a decision reported in *Siban Rai v. Bhagwant Dass* AIR 1920 Pat 176. I have

selected this decision because the two learned Judges who constituted the Bench in this case held different views on the point. Mullick J. expressed the view of the majority and observed :

'.....in cognizable cases the private prosecutor has no position at all and that if the Crown, which is the custodian of the public peace, decides to let an offender go, no other aggrieved party can be heard to object that he has not taken his full toll of private vengeance. These observations were made with reference to a private party's power to get an acquittal set aside in a cognizable case which had been conducted by the Public Prosecutor; but if it were necessary here I would be prepared to hold that they apply with equal force to acquittals in all cases.'

Mullick J. in an earlier part of this decision also admitted that in a revision against acquittal the Courts decline to interfere even though there was a clear error in the lower Court's judgment. The contrary view was expressed by Macpherson J. and he observed at page 179 :

'Again too much stress may easily be laid upon the remedy available under Section 417 even in police cases. An appeal against acquittal is a special weapon in its armoury which a local Government judiciously reserves for exceptional occasions, and which is only used after most anxious consideration and in cases which are themselves of great public importance or in which a principle is involved. It cannot be expected that Government will dull the edge of that salutary provision by utilizing it freely in cases which though of importance to individual subjects, are of no, or of little, general interest. Actually, therefore, a remedy under Section 417 is practically nonexistent in the less heinous cases whether they are private or public prosecutions. Yet where justice fails in this country, it undeniably does so at least as much by erroneous acquittal as by conviction.'

24. I have given the two views and it seems to me that the Legislature found a great deal of force in the view expressed by Macpherson J. This view was supported by another Bench decision of the Patna High Court in *Wazir Kunjra v. Emperor*, AIR 1929 Pat 139. The extract cited above was quoted in this decision and it was further held :

'Even if the reference had been made by a District Magistrate it is impossible to believe that any Court of justice having jurisdiction, as this Court admittedly has, would permit a manifestly erroneous acquittal induced by inadvertence to stand.'

This view of the Patna High Court was approved by Tek Chand J. in *Nathu Mal v. Abdul Haq*, AIR 1930 Lah 159. Tek Chand J. expressed his complete and whole-hearted concurrence with the view of Macpherson J. Perhaps it was because of these observations made by the learned Judges in these and similar cases which induced the Legislature to give a broader base to the complainant to seek his relief against a perverse order of acquittal.

25. Secondly the Legislature for obvious reasons did not want to give an absolute right to the complainant to file an appeal against every order of acquittal. The Legislature realized that if this right was given to the complainant it would be abused by him and in every case the complainant would come forward and file an appeal. An accused who was acquitted had to be protected from the malice of a vindictive complainant. As the order of acquittal was not to be disturbed lightly the jurisdiction of the District Magistrates and the Sessions Judges was taken away and only the High Courts were vested with this jurisdiction.

Thirdly the relief was to be given expeditiously and it was undesirable that an unnecessary intermediate step should be retained. I am, therefore, of the opinion that the Legislature for very good reasons took away the jurisdiction of the District Magistrates and the Sessions Judges to entertain an application of revision against an order of acquittal, Therefore, neither on merits nor on law it can be urged that the complainant was given an additional right to appeal under Section 417 (3), Cr. P. Code and this amendment did not take away his right to file a revision under the old Code.

26. The only question that now remains for determination is whether I should use my inherent powers under Section 561-A, Cr. P. Code, to set right a clearly illegal order passed by the Magistrate. In my opinion powers under Section 561-A Cr. P. Code should be sparingly used and it is only when it is necessary in the interests of justice, that the High Court should invoke these powers. I think that in order to make it necessary three conditions should be fulfilled. In the first place the injustice

which comes to light should be of a grave character and not of a trivial character. So far as this point is concerned, I am in agreement with the counsel for the applicant that a grave injustice has been caused in this case.

Where an offence is committed against the provisions of the Child Marriage Restraint Act, it assumes public importance, for the injury is not done to an individual but to the community at large. Where social legislation is enacted and people treat it as a dead letter, then every breach of such social enactment assumes importance and it is in the interests of the community that the person who commits such a breach should be punished. Laws are meant to be observed and not to be broken en masse. The provisions of the Child Marriage Restraint Act are being flagrantly violated by a large number of people and, therefore, any case filed under this enactment is one which assumes a gravity and it cannot be treated as a trivial offence.

27. The second condition which in my opinion should exist before the High Court exercises its inherent powers is that the injustice which is noted is of a clear and palpable character and not of a doubtful character. The Additional District Magistrate when he made this reference did not deal with the merits of the case at all. I have gone through the proceedings held in the court of the Magistrate and I find that the injustice sought to be remedied is not free from doubt. When the two opposite parties who were married, namely Ram Kumar and Shrimati Rajeshwari, appeared before the Magistrate, they also submitted medical certificates about their age. They also filed affidavits in respect of their age and the Magistrate also noted his own observations. The medical certificates were given by Dr. B. L. Gupta, Civil Surgeon Rai Bareilly. The Doctor found that Shrimati Rajeshwari was about 17 years of age and Ram Kumar was about 19 years of age. The Magistrate when these opposite parties appeared before him noted in an order:

'The boy and girl who also have appeared before me to-day apparently appear to be major.'

These observations were made by him when an injunction was sought to be issued by the complainant in order to stop the marriage. The Magistrate rejected this prayer and noted his own observations as well as the contents of the

certificates given by the Civil Surgeon in his order. On the other hand the complainant relies probably on the ages of Ram Kumar and Shrimati Rajeshwari recorded at the time of their admission to the schools. There is evidence that school teachers were called as witnesses for the complainant. A large number of guardians in this country understate the ages of their wards when they send them to an educational institution.

At any rate in view of the observations of the Magistrate which were supported by the medical certificates given by the Civil Surgeon, which were based on clinical data noted by him, it cannot be said that the matter is free from doubt. Under the [Child Marriage Restraint Act, 1929](#), a child is defined as a male under 18 years of age and a female under 15 years of age. If the certificates given by the Civil Surgeon are approximately correct, then it seems doubtful that any child marriage was performed. Both the contracting parties of this marriage do not come under the definition of a child. I am, therefore, of the opinion that the injustice caused in this case is of a doubtful character and, therefore, it cannot be said that it is necessary in the interests of justice to utilize the powers under Section 561-A Cr. P. Code.

28. There is another reason why it would be undesirable to interfere with the order of acquittal in this case. Section 9 of the Child Marriage Restraint Act lays down:

'No Court shall take cognizance of any offence under this Act after the expiry of one year from the date on which the offence is alleged to have been committed.'

No doubt the complainant filed his complaint even before the marriage was performed and, therefore, the words of this section do not apply to this case, but once the opposite parties were acquitted, the setting aside of the order of acquittal, though it would not be in conflict with the words of the section cited above, would certainly be in conflict with its spirit. About a year and a half has elapsed since Ram Kumar and Shrimati Rajeshwari were married and it would be violating the spirit of this rule, if the order of acquittal is set aside and the proceedings are reopened.

29. The third condition which should be fulfilled is that there exists no other provision of law by which the complainant could have sought relief. In this case it is

the complainant who is to blame for not filing an appeal but going to the District Magistrate with an application of revision. Still in certain circumstances the High Court may not insist upon the fulfilment of this condition before acting under Section 581-A Cr. P. Code. I might have waived this consideration in this case, because I was satisfied that a grave injustice was done, if on merits I had not come to the conclusion that the injustice claimed is of a very doubtful character. I am, therefore, of the opinion that in the circumstances discussed above a case has not been made out for interference, for it cannot be held that it is necessary in the interests of justice to set aside the order of acquittal.

30. For the reasons given above, I do not propose to invoke my powers under section 561-A Cr. P. Code. I have already held above that the reference made by the Additional District Magistrate was incompetent and it cannot be entertained.

31. This reference is, therefore, rejected.

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