

**State Vs. Tharu**

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**Court :** Orissa

**Decided On :** Jul-20-1962

**Reported in :** 28(1962)CLT431; 1963CriLJ133

**Judge :** R.L. Narasimham, C.J.

**Appellant :** State

**Respondent :** Tharu

**Judgement :**

ORDER

R.L. Narasimham, C.J.

1. This is a reference by the Additional District Magistrate, Sundargarh, in a case under Sections 456 and 354 I.P.C. which ended in discharge in the Court of the S.D.M., Bonal, on 13-1-1962. The opposite party was sent up for trial for having committed house breaking and attempted to outrage the modesty of a married woman during the midnight of 18-7-61. There were several adjournments taken by the C.S.I. for the purpose of supplying copies of necessary police papers, but these were not supplied. Hence on 13-1-62 the learned Magistrate discharged the accused, but noted in the order-sheet that when the C.S.I. was asked to secure the remaining copies, he expressed his 'helplessness'. The learned Additional District Magistrate has observed that in a case of this type where even after the expiry of 5 1/2 months after the submission of the charge sheet the police would

not supply the necessary copies to the accused as required by Section 251-A, (1) Cr.P.C. there was no other alternative, time left to the Magistrate except to discharge the accused. Having thus endorsed the action of the Magistrate, he however made a reference to this Court as the point involved is of far-reaching consequence.

2. The recent decision of the Supreme Court in *Narayan Rao v. State of Andh. Pradesh* : 1957 CriLJ1320 has finally decided the question as to whether the word 'shall' occurring in Section 207A(3) Cr.P.C. (which is similar to Section 251-A (1)) on this point is mandatory or directory. Their Lordships held it to be directory only, and that consequently even if there is an entire omission to carry out the provisions of Section 207 A (3) read with Sub-section (4) of Section 173, that omission would be a mere irregularity and not an illegality vitiating further proceedings.

3. Hence in this case also, notwithstanding the non-supply of the police papers required by Section 207-A (1) it will be open to the Magistrate to consider whether on the peculiar facts of this case material prejudice would be caused to the accused in his cross-examination of the prosecution witnesses. If he considers that such prejudice is likely to be caused, he may be justified not to proceed with the enquiry unless such copies are furnished, and if they are not furnished he may be justified in discharging the accused.

4. But here I find that no evidence was recorded. The allegations against the opposite party are of a serious nature involving outrage on the modesty of a married woman. The aggrieved party, namely, the woman and her husband should not be penalised for any negligence on the part of the police officials in granting copies. They are entitled to see that justice is done to them. The learned Standing Counsel for the Government gave an assurance to this Court that as soon as the records are transmitted to the trying court, he will see that the requisite copies of the police papers are given to the accused or his advocate within 15 days from that day. In view of this assurance, I think one more chance should be given to the prosecution to prove its case. I therefore set aside the order of discharge passed by the Magistrate dated 13-1-62 in C.R. Case No. 123 of 1961 and direct him to rehear the case and dispose of it according to law. The records should be

transmitted to him at once and he will give notice to the accused to appear before him and also inform the C.S.I. about the assurance given by the learned Standing Counsel here and give 15 days time from the date of receipt of the record to the prosecution to hand over all copies of the police papers required by Section 173 (4) read with Section 251 A (1) Cr.P.C.

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