

**State Vs. John Abraham**

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**Court :** Kerala

**Decided On :** Jul-29-1959

**Reported in :** 1961CriLJ92

**Judge :** T.K. Joseph, J.

**Appellant :** State

**Respondent :** John Abraham

**Judgement :**

**T.K. Joseph, J.**

1. This appeal preferred by the State is directed against the acquittal of the respondent by the Sub-Magistrate, Thiruvella. The accused was charged with an offence of theft and the case was that he committed theft of four coconuts from the garden belonging to the first witness in the police report. The case came on for evidence twice and as the Prosecution did not examine any witness, the Magistrate acquitted the accused. Though the offence is trivial the appeal has been preferred as the validity of the procedure adopted by the Magistrate is questioned.

2. The case came on for prosecution evidence on 5-11-1958 and J3-11-1958. On the latter date the prosecution filed a report stating that the witnesses had refused to execute kychits and seeking orders. There was no prayer to issue process for

compelling the attendance of witnesses. It is contended on behalf of the State that under Section 251-A(7) of the Code of Criminal Procedure the Magistrate was bound to examine all the witnesses mentioned in the police report and to issue process for their appearance in case the prosecution failed to produce them. The argument is that the words 'to take all such evidence as may be produced in support of the prosecution' mean that the court is bound to examine all the witnesses whose names are mentioned in the police report.

I am unable to accept this argument. The duty of the court is only to take evidence which is ready when the case is taken up for hearing and the Magistrate is not bound to go on adjourning the case until all the witnesses mentioned in the police report are examined. It may also be mentioned that in Section 252 which relates to cases instituted otherwise than on police report there is a provision which makes it obligatory for the Magistrate to ascertain from the complainant or otherwise the names of persons likely to be acquainted with the facts of the case and to be able to give evidence for the prosecution and to summon all or such of term as he thinks necessary This provision contained in Section 252 is not found in Section 251-A which governs the procedure for cases instituted on police report. In the circumstances, I am of opinion that there is no irregularity in the procedure adopted by the learned Magistrate. The appeal is therefore dismissed.

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