

State of Gujarat Vs. Keshavram Shivram Devmurari and anr.

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Court : Gujarat

Decided On : Sep-14-1976

Reported in : (1977)18GLR524

Judge : N.H. Bhatt, J.

Appellant : State of Gujarat

Respondent : Keshavram Shivram Devmurari and anr.

Judgement :

N.H. Bhatt, J.

1. This is the suo motu revisional proceedings initiated by the High Court. One Keshavram Shivram had filed a criminal case No. 1555 of 1975 in the Court of the Metropolitan Magistrate, IInd Court, Ahmedabad for offences under Sections 323, 504 and 506 of the I.P.C.

2. The complainant was examined as a witness and so were examined his two witnesses and the case thereafter was adjourned to some other date for examination of a Doctor to prove the alleged injuries on the person of the complainant. On that adjourned date of hearing, the complainant's lawyer and the witness - the Doctor - were present, but the complainant had not remained present. The lawyer for the complainant offered to examine the Doctor and to go ahead with the proceedings, but the learned Magistrate dismissed the complaint

on account of the absence of the complainant and acquitted the accused. The matter came to the notice of the High Court and the above proceedings have been initiated.

3. The original accused is present in person and says that he has talked with some advocate who is going to appear for him and on that ground he sought adjournment. There is no reason for me to adjourn the matter in which no allegation has been levelled against the original accused. Moreover he did not disclose what lawyer he contented. I have, therefore, turned down the oral prayer made by the original accused to adjourn the proceedings.

It is really surprising that a seasoned Magistrate of the Court of Metropolitan Magistrate in Ahmedabad acted in the manner found in this case. The complainant's presence was no longer necessary and there was no reason for the learned Magistrate to dismiss the complaint especially when his advocate was ready to go ahead with the case and examine the only remaining witness, the medical officer.

4. Under Section 256 of the Code the Magistrate has no doubt power to acquit the accused if the complainant does not appear on the day appointed for the appearance of the accused or any day subsequent thereto. This power has been conferred on the Magistrate obviously for the ends of justice and with a view to see that an accused person is not subjected to any undue harassment. By way of abundant caution, the very section further provides that it is not obligatory on the part of the Magistrate to dismiss the complaint and he has been clothed with the power to adjourn the hearing of the case to some other day. The proviso annexed to this section further makes the position crystal clear. It lays down that where the complainant is represented by a pleader or 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. The situation as was before the learned Magistrate on the day in question squarely fall within the proviso and still the learned Magistrate has acted under the main part of this section. This is really unfortunate and it is hoped that repetition of such instances would not be there in future in the court of this learned Magistrate or in the court of

any other Magistrate. A copy of this judgment is directed to be circulated to all the Magistrates in the State.

5. The result is that the revision application is allowed. The order acquitting the accused is set aside and the case is remanded to the court of the Chief Metropolitan Magistrate, Ahmedabad for disposal in accordance with law. It is further directed that the same learned Magistrate shall not proceed with this case and any other Metropolitan Magistrate will be assigned the disposal of this case. This later direction is given to the Chief Metropolitan Magistrate who himself should try the case or transfer it to any other Magistrate other than the Magistrate who has passed the impugned order.

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