

**Mool Chand Vs. the State**

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**SooperKanoon Citation :** [sooperkanoon.com/750798](http://sooperkanoon.com/750798)

**Court :** Rajasthan

**Decided On :** Apr-02-1957

**Reported in :** AIR1959Raj33; 1959CriLJ233

**Judge :** D.S. Dave, J.

**Acts :** [Code of Criminal Procedure \(CrPC\) , 1898](#) - Sections 247

**Appeal No. :** Criminal Ref. No. 29 of 1957

**Appellant :** Mool Chand

**Respondent :** The State

**Judgement :**

ORDER

**D.S. Dave, J.**

1. This reference comes on the report of the learned Sessions Judge, Bikaner, dated 8-2-1957. The facts giving rise to it are that the Municipal Board, Bikaner, through its Executive Officer, presented a complaint in the Court of the Sub-Divisional Magistrate, Bikaner City, against one Mool Chand for an offence under Section 160 of the Municipal Act.

The case was tried by the Second Class Magistrate since it was transferred to him. He issued summons to the accused and fixed the case for hearing on 25-8-

1956. The case could not be taken up on that day since it turned out to be a holiday. The case was then adjourned to 25-9-1956; but it could not be heard since the Magistrate had gone to Kotah for giving his own evidence in some case.

The case was, therefore, fixed for hearing on 16-10-1956. On this date the plea of the accused was recorded and then the case was fixed for prosecution evidence on 7-11-1956. When the case was taken up on this date (7-11-1956), counsel for the accused requested the Court that the complainant was absent and therefore the accused should be acquitted. Thereupon counsel for the complainant presented an application to exempt the complainant from personal attendance.

It is not clear whether the parties were not prepared for arguments on this application or whether the Magistrate could not make up his mind; but the case was adjourned to 12-10-1956 for arguments. The arguments were actually heard on 15-11-1956. On this date, the Magistrate passed an order exempting the complainant, namely, the Executive Officer, from his personal attendance.

He rejected the prayer of the accused for his acquittal under Section 247, Cr. P. C. Against this order the accused filed a revision application in the Court of the Sessions Judge at Bikaner. The learned Sessions Judge is of the view that the Magistrate ought to have acquitted the accused since the complainant was absent on 16-10-1956 and 7-11-1956 and therefore he has recommended that this order should now be passed by this Court.

2. Neither party has cared to appear in this Court.

3. I have given due consideration to the recommendation made by the learned Sessions Judge, but I find myself unable to accept the same.

4. Section 247, Cr. P. C., 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.'

5. It is clear from the provisions of this Section that if the summons has been issued on complaint and a date is fixed for appearance of the accused, then the complainant must also appear on that day. If the hearing is adjourned to any subsequent date, then on such date also the complainant should appear and if he fails to do so, then the Magistrate should acquit the accused unless for some reason the Magistrate thinks it proper to adjourn the hearing of the case to some other day.

At the same time it may be pointed out that the words 'unless for some reason he thinks proper to adjourn the hearing of the case to some other day' clearly mean that if there are good reasons for the non-appearance of the complainant or if for some other good reasons the Magistrate thinks it proper that the case should be adjourned to another date, then it is not incumbent upon him that he must acquit the accused.

This does not certainly mean that the Magistrate should deny the right of acquittal to the accused simply by adjourning the case if the complainant is not present and there are not good reasons for such an adjournment. The purpose of making this provision is that summons cases being mostly of trivial nature, the accused should not be harassed and if the complainant fails to appear on the date fixed, the Court should acquit the accused.

Now applying these principles to the present case, it would appear that on 16-10-1956 the accused did not ask the Court that he should be acquitted. It appears from the order-sheet that after the plea of the accused was recorded, the prosecution wanted to lead its evidence; but the Court fixed 7-11-1956 for recording that evidence and adjourned the case. The order-sheet does not show whether the complainant was present on that day or not.

If the accused had requested the Court for his acquittal the 'perokar' of the Municipal Board who was certainly present on that day, would have either

produced the complainant if he was not there or would have moved the Court for his exemption from attendance. It appears that this date was changed without any objection from the accused. The order-sheet of the next day also does not show if the accused requested the Court for his acquittal on account of the absence of the complainant on 16-10-1956.

Thus it is quite clear that the accused seems to have raised the contention for the first time in the Court of Session that he was entitled to acquittal on account of the complainant's absence on 16-10-1956. This was, however, not proper. If the accused does not raise any objection to the adjournment of the case and if the Court adjourns the case to another date, then on some future adjourned date, he cannot with justification argue that he ought to have been acquitted on the date on which the Magistrate had adjourned the case.

As pointed out above, the Magistrate is not bound to acquit the accused if for some reason he thinks it proper to adjourn the hearing of the case to some other day. It is very necessary that the Magistrate should ordinarily give the reasons. But if the accused does not object and in such case the reasons are not recorded, then it may be presumed that there was some good reason, otherwise the accused himself would have raised the objection.

6. Now as regards the question of the complainant's absence on 7-11-1956, it has already been pointed out above that the complainants 'perokar' presented an application for exemption of the complainant from appearance. As soon as the objection was raised in the Court, the Magistrate ought to have disposed of that application immediately and if he had exempted the complainant from attendance, as he did on the next date (15-11-1956), the question of acquittal could not arise.

In my opinion, the accused cannot demand his acquittal on account of the complainant's absence on 7-11-1956 because the complainant's counsel had presented an application for exemption and both parties wanted time for arguments on that application. I do not approve the Magistrate's action in giving an adjournment for arguments on such an application. It was a simple matter and ought to have been decided forthwith. The proviso to Section 247 lays down that if in the opinion of the Magistrate the personal attendance of the complainant is not

necessary, he should dispense with his attendance and proceed with the case.

In a matter like the present one, where complaint comes from the Executive Officer of the Municipality, there should ordinarily be no hitch in giving exemption to him from personal attendance unless it is considered that the complainant himself has some personal knowledge regarding the accusation and his own evidence or his presence for some other reason, is necessary. Formerly, this provision was applied to only public servants; but now this Section has been amended and the Magistrate is free to exempt even those complainants from personal attendance who are not public servants. It would not have been proper on the part of the Magistrate if he had acquitted the accused without disposing of the application of the complainant for his exemption from the Court.

7. Learned Sessions Judge has referred to Arjan-das Tulsidas v. G. K. Bhagat, AIR 1954 Ajmer 31 (2) (A), City Magistrate, in support of his view. That case is, however, easily distinguishable; because in that case no request written or oral was made to the Magistrate for dispensing with the attendance of the complainant nor was any order to that effect passed by the Magistrate by the time the case went to the Court of the Judicial Commissioner.

Learned Sessions Judge has referred to one more case, but given a wrong citation. The names of the parties have also not been given and therefore it is not clear which case was in his mind. Under the circumstances, I do not see my way to agree with the recommendation of the learned Sessions Judge.

It appears from the record of the trial Court that the complainant's evidence is already over and the accused has taken time for producing his evidence in defence. I cannot part with this case without remarking that the Magistrate has taken a very long time in this case which is of a petty nature. He should now dispose it off expeditiously.

8. With these remarks, the reference is rejected.