

State Vs. Satish Chandra and ors.

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SooperKanoon Citation : sooperkanoon.com/755507

Court : Rajasthan

Decided On : Jan-13-1976

Reported in : 1976WLN(UC)10

Judge : M.L. Jain, J.

Appeal No. : S.B. Criminal Appeal No. 1090 of 1971

Appellant : State

Respondent : Satish Chandra and ors.

Disposition : Appeal allowed

Judgement :

M.L. Jain, J.

1. This is an appeal by the State against the judgment of the learned City Magistrate, Bikaner, dated 9-2-71. No one appears on behalf of the respondents. I have heard the learned public prosecutor and perused the record of the case.

2. A complaint was filed in the court of the learned Sub-Divisional Magistrate, Bikaner against the accused respondents, who are office bearers and directors of the Bikaner Sahakari Upbhokta Wholesale Bhandar under Section 28 of the Payment of Bonus Act, 1965, for contravention of Section 19 of the said Act under which they were required to pay Bonus to their workers. The case was fixed on 18-

1-71 on which day one of the accused, namely, Banwarilal was act present andailable warrants for his attendance were issued and the case was adjourned to 17.2.71 On that day one of the accused namely Mst. Indra filed her bail bonds which clearly show the latter date. After adjournment of the case on 18.1.1971 it appears that the date of hearing was changed from 17.2.01971 to 9.2.1971. No intimation of the change was given to Labour Inspector, who was a complainant in the case as such he could not present himself before the learned City Magistrate and the learned Magistrate acquitted the accused under Section 247 Cr.P.C. by his impugned judgment. On 17.2.71 the Labour Inspector appeared & filed an application that he was not informed of the change in the date and more over, he had been exempted from personal attendance on his applicant on made on 18-1-1971. This is clear from the order given on the application it self. The application of 17-2-1971 was directed to believed.

3. The learned public prosecutor submitted that the complainant failed to appear because of the change in the date which occurred in the aforesaid manner. Even if it were presumed that the complainant knew of the adjourned date of hearing and failed to appear the learned Magistrate should not have dismissed the complaint for default. According to the proviso of Section 247 Cr.P.C. (old), the Magistrate may dispense with the attendance of the complainant where he is of the opinion that the personal attendance of the complain-ant was not necessary The Magistrate was brood to exercise his discretion in a judicial manner because as held in Johari Lal v. Shanti Lal 1964 RLW 418, Section 247 Cr.P.C. is not intended to fierve a short cut for the trial Court to dismiss cases by snap judgments. The power under the said section must be judicially exercised and it roust be seen and considered having regard to the circumstances of the given case whether the presence of the complainant was essential on that date in order to proceed with the case or it could be dispensed with.

4. In Municipal Council Jaipur v. Rameshwarlal 1968 Cr.L.J. 719 it was observed that when the complainant dos net appear the court is not bound to order acquittal for nonappearance of the complainant and it should proceed with the case if it is satisfied that personal attendance of complainant is not necessary.

5. It appears from the report of the Labour Inspector that the Bhandar began to earn profits right from 1963 though it suffered losses in the year in question. It is, however, enjoined by section 10 of payment of minimum bonus whether there are profits in the accounting year or not. The Magistrate was therefore, duty bound to see if the provisions of the Act were contravened and this he could do so by not dismissing the complaint in the absence of the complainant who was a public servant and above all had also obtained exemption of attendance. The date was changed by overwriting behind his back on that date his appearance was not necessary and the Magistrate could proceed with the case even in the absence of the complainant. It does not appear to me a proper exercise of discretion on the part of the Magistrate. It further does appear that the learned Magistrate was not fair and just either in the manner he changed the date.

6. I, therefore, accept this appeal, set aside the order under appeal and remand the case to the learned lower court for retrial according to law. The case shall be retried by the Judicial Magistrate concerned.