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Court : Rajasthan

Decided On : Sep-06-1956

Reported in : AIR1957Raj352; 1957CriLJ1316

Judge : Sharma, J.

Acts : [Code of Criminal Procedure \(CrPC\) , 1898](#) - Sections 107 and 249

Appeal No. : Criminal Ref. No. 64 of 1956

Appellant : Arjun

Respondent : Kessingh and ors.

Judgement :

ORDER

Sharma, J.

1. This is a reference by the learned Sessions Judge, Jhunjhunu in a case under Section 107 Cr. P. C. It has been recommended by the learned sessions judge that the order of the S. D. M. Nawalgarh dated 30-6-56 stopping the proceedings of the case under Section 249 Cr. P. C. and releasing the non-applicants Kessingh, Bhagtawarsingh, Madansingh and Chatarsingh be set aside.

2. parties have not appeared. I have gone through the record of the case and have also perused the judgments of both the lower courts as well as the explanation of

the learned Magistrate. I do not think that under the circumstances of this case, learned S. D. M. was entitled to stop the proceedings in this case under Section 249 Cr. P. C. Section 249 applies to a summons case which terminates, either in acquittal or conviction of the accused. This is quite apparent from the phraseology of the said section which runs as follows :

'Section 249 -- In my case instituted otherwise than upon complaint, a Presidency Magistrate, a Magistrate of the first class, or with the previous sanction of the District Magistrate, any other Magistrate, may for reasons to be recorded by him, stop the proceedings at any stage without pronouncing any judgment either of acquittal or conviction, and may thereupon release the accused'.

The words 'either of acquittal or conviction' are significant. In a proceeding under Section 107 there can be no conviction or acquittal. Either the persons against whom those proceedings are taken may be discharged or may be bound down. Of course, Section 117 lays down that an enquiry in a case in which the order requires security for keeping the peace shall be made as early as practicable in the manner prescribed for conducting trials and recording evidence in summons cases. But that does not mean that an inquiry in a case under Section 107 is a trial of a summons case in which ultimately there is either an acquittal or a conviction.

I understand from the judgment of the learned sessions judge that even the counsel for the opposite party had conceded that Section 249 is not applicable to the facts of the present case and in my opinion, he had rightly conceded. Now apart from Section 249 Cr. P. C., I do not find any provision in the code under which proceedings under Section 107 can be stopped. When an order under Section 112 has been read or explained under Section 113 to a person present in court or when any person appears or is brought before a magistrate in compliance with or in execution of a summons or warrant issued under Section 114, the magistrate is bound to inquire into the truth of the information upon which action has been taken.

In this case although a number of witnesses were cited by the police yet none of them was examined. A magistrate can very well discharge the person against whom an order is made under Section 112 Cr. P. C., if upon an inquiry under

Section 117 it is not proved that it is necessary for keeping the peace that the person in respect of whom an inquiry is made should execute a bond. But for this an inquiry under Section 117 is necessary. In the present case no inquiry has been made under Section 118 end, therefore, the learned Magistrate could not discharge the opposite party.

3. The reference is accepted, the order of the learned S. D. M. Nawalgarh dated 30-6-54 stopping the proceedings against the opposite party under Section 249 Cr. P. C. is set aside, and the case is remanded to the learned Magistrate for further proceedings in accordance with law and the observations made above.

4. This order of mine will not preclude the Magistrate from taking proceeding against the applicant Arjun also under Section 107 if he thinks that such proceedings are necessary in order to prevent the breach of peace.

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