

**In Re: E. Elumalai**

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**Court :** Chennai

**Decided On :** Mar-02-1971

**Reported in :** 1971CriLJ1396

**Judge :** K.N. Mudaliyar, J.

**Appellant :** In Re: E. Elumalai

**Judgement :**

ORDER

**K.N. Mudaliyar, J.**

1. The Reserve Sub-Inspector of Police, R-I, Traffic Madras filed a complaint against one E. Elumalai, the petitioner herein, for an offence Under Section 115 of the Motor Vehicles Act. From the record, it is seen that the accused was present on the 15th day of June 1970, but the complainant and his witnesses were absent. Undoubtedly, proceedings Under Section 115 of the Motor Vehicles Act are non-cognisable. Therefore, in my view, the complaint filed by the respondent against the petitioner is a complaint within the meaning of Section 4 (1) (h) of the Criminal Procedure Code. Such a complaint would fall within the ambit of Section 190 (1) (a) of the Criminal Procedure Code and therefore the only section that would inevitably come into play is Section 247. Undoubtedly, on the 15th day of June 1970 the complainant did not appear. Therefore, the Magistrate ought to have acquitted the accused for the section speaks about the mandatory duty laid on the

Magistrate that he shall acquit the accused. No doubt there is a proviso wherein some' judicial discretion is vested in the Magistrate enabling him to adjourn the hearing of the case to some other day for 'some reason' explicitly which he thinks proper to mention for adjourning the hearing of the case.

2. The Presidency Magistrate had no authority to act Under Section 249, Criminal P, C. His order which is now questioned in this revision petition is clearly against law. The revision petition is allowed and the petitioner is acquitted.

3. For this view taken by me about the scope of Sections 247 and 249, Criminal P.C. I am fortified by the reasoning found in the judgment of Obul Reddi, J. in Public Prosecutor v. Chukkiah, 1967 11 MLJ 402. The learned Public Prosecutor brought to my notice the Andhra Pradesh decision with a sense of fairness.

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