

**In Re: Guggilapu Peddaya**

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**SooperKanoon Citation :** [sooperkanoon.com/817921](http://sooperkanoon.com/817921)

**Court :** Chennai

**Decided On :** Oct-25-1910

**Reported in :** 9Ind.Cas.253

**Judge :** Abdur Rahim, J.

**Appellant :** In Re: Guggilapu Peddaya

**Judgement :**

ORDER

**Abdur Rahim, J.**

1. The question is whether the conviction of the accused under Section 352, Indian Penal Code, by the Stationary Sub-Magistrate of Narsapur was bad on the ground that the complainant had, professedly on the same facts, preferred a charge for the same offence. The order disposing of that case under Section 247, Criminal Procedure Code, had not been set aside. In the first case neither the complainant nor the accused appeared and the Stationary Sub-Magistrate passed an order 'Complainant absent; disposed of under Section 247, Criminal Procedure Code.' The effect of Section 247, undoubtedly, is that the order amounts to an acquittal. But it is urged in the letter of reference that Section 403, Criminal Procedure Code, will not bar a fresh trial, unless the accused had in the first case been tried and he could not be said to have been tried unless he had appeared in answer to a summons. I do not think I should be justified in confining the effect of an acquittal

under Section 247, Criminal Procedure Code only to cases in which the accused appeared in answer to the summons, when its language clearly does not call for such limitation. The question then is, what effect is to be given to the word 'trial' in Section 403 in cases falling under Section 247; Criminal Procedure Code? I should approach the question in this way Suppose the accused did appear, but the complainant was absent, the Magistrate would be bound, without reference to the merits of the charge, to acquit the accused: That shows, in my opinion, that the word 'trial' in Section 403, Criminal Procedure Code, does not necessarily import decision of the case On the merits so far at least as proceedings under Section 247, Criminal Procedure Code, are concerned, and any other construction, it seems to me, would render the provisions of the latter section nugatory. The non-mention of Section 247 in the explanation to Section 403, Criminal Procedure Code, would also show that the latter section was not intended in any way to limit the effect of an order of acquittal under Section 247. If, therefore, the word 'trial' in Section 403 does not necessarily imply decision on the merits, I find no reason for saying that an accused, who has been served with process in a summons case and does not appear, is not entitled to the full benefit of an acquittal when the case against him has been dismissed under Section 247. I am inclined, therefore, to follow the rulings in *Panchu Singh v. Umar Mahomed Sheikh* 4 C.W.N. 346; *Kedarnath Biswas v. Adhin Mani* 7 C.W.N. 711 and *Bishan Dass Ghosh v. Emperor* 7 C.W.N. 493. The order of the Head Assistant Magistrate setting aside the conviction is right. The papers may be returned.