

Amulya Kumar Dutta and anr. Vs. State and anr.

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Court : Kolkata

Decided On : Jan-09-1957

Reported in : AIR1957Cal334,1957CriLJ631

Judge : Debabrata Mookerjee, J.

Acts : [Code of Criminal Procedure \(CrPC\) , 1898](#) - Sections 4, 241 and 251;
;Code of Criminal Procedure (CrPC) (Amendment) Act, 1955 - Section 116

Appeal No. : Criminal Revn. No. 1571 of 1956

Appellant : Amulya Kumar Dutta and anr.

Respondent : State and anr.

Advocate for Def. : Pankaj Coomar Ghose, Adv.

Advocate for Pet/Ap. : Nalin Chandra Banerjee, Adv.

Judgement :

ORDER

Debabrata Mookerjee, J.

1. This is a petition of revision of an order of a Magistrate at Alipur; dated the 8th December, 1956, by which the learned Magistrate declined to follow in this case the procedure laid down for the trial of summons cases as prescribed in Ch. XX of

the Code of Criminal Procedure. It appears that a complaint was filed on the 12th October, 1955, and summons were issued under Section 448 of the Indian Penal Code. At the time when the processes were issued, Section 448 was a warrant case charge. The Magistrate seems to be of the view that since the proceedings commenced under the old procedure, he is to continue it and he is not obliged to follow the new procedure introduced by the amendments. I am afraid the Magistrate is Wrong. Nobody has any vested right in procedure and as soon as new amendments came into operation, the Magistrate, was obliged to follow the summons case procedure.

2. It is said that after taking some evidence, it appeared that the accused had committed trespass of a kind which could not be described as being under Section 448, but under Section 447 of the Indian Penal Code. He is further charged under Section 352 of the Indian Penal Code. Whatever charges he may ultimately be found guilty of, the Magistrate is required to follow the new procedure. It is to be observed that under the amendments, Section 448 of the Indian Penal Code is no longer a warrant case triable according to Ch. XXI of the Code of Criminal Procedure, In any event, now that it is clear that summons case offences are alleged to have been committed, the Magistrate should follow the procedure prescribed for the trial of summons cases. There can be no doubt that if the warrant case procedure is observed, that may lead to deprivation of certain rights which the accused men may have if the procedure prescribed in Ch. XX of the Code were followed. To take one instance, if the complainant absents himself on a day fixed for the hearing of the case, the Magistrate may instead of adjourning the cases acquit the accused. That is indeed a valuable right which the petitioner stands in danger of being deprived if the procedure for warrant case is followed.

3. The order of the Magistrate complained of is accordingly set aside and he is directed to follow the summons case procedure and conclude the trial. This Rule is made absolute.