

Hari Narayan Das and ors. Vs. the State

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Court : Kolkata

Decided On : Feb-22-1952

Reported in : AIR1953Cal496,57CWN68

Judge : Guha, J.

Acts : [Code of Criminal Procedure \(CrPC\) , 1898](#) - Sections 253, 436 and 439

Appeal No. : Cri. Revn. No. 1007 of 1951

Appellant : Hari Narayan Das and ors.

Respondent : The State

Advocate for Def. : B.M. Sen, Adv.

Advocate for Pet/Ap. : Ajit Kumar Dutt, Adv.

Judgement :

ORDER

Guha, J.

1. The petitioners were summoned under Section 411, Penal Code, to take their trial. It appears that the case dragged on for a very considerable period mainly owing to the complainant not offering himself for examination. Ultimately the trying Magistrate got exasperated, and decided to hear arguments regarding the framing

of the charge. By that time it may be mentioned 12 witnesses have been examined for the prosecution. Ultimately the trying Magistrate discharged the present petitioners under Section 253, Criminal P. C., holding that no case has been made out against them as the complainant had not been examined and it could not be said that the articles found with the present petitioners were properties which were stolen from the complainant. It was also held by the Magistrate that there was nothing to show that these articles were entrusted with the present petitioners by the complainant. Thereupon there was a petition before the Additional District Magistrate at the instance of the complainant for setting aside the order of discharge. It may be mentioned incidentally that in the proceedings before the Additional District Magistrate the State did not appear. The learned Additional District Magistrate came to the conclusion that an opportunity should be given to the complainant for his appearance and that it was essential in the interests of justice that the complainant should be examined. Accordingly he set aside the order of discharge and directed the trying Court to hold further enquiry into the case.

It has been contended before me on behalf of the petitioners that by his own conduct in keeping away from the Court continuously and persistently the complainant is mainly to blame and that he deserves no indulgence in the circumstances of the present case. I have been taken through the various orders passed by the trial Court in this case and I can only say that there was ample ground for the trying Court to take a strong step at the last moment and for his declining to show any further indulgence to the prosecution. The prosecution had no business whatsoever to waste public time and money ostensibly in the interests of justice by keeping back the complainant on so many occasions. It is strange that as soon as the trying Court passed an order of discharge the complainant thought it proper to come into the open and move the District Magistrate for interfering with the order of discharge. It is also noticeable that at that stage the State did not even consider it necessary in the interests of justice to intervene in the proceedings.

2. On the facts of the present case and in view of what is palpable from the various orders passed by the trying Court I have no manner of doubt in my mind in holding

that the complainant does not deserve any sympathy whatsoever, nor am I impressed by the argument that the interests of justice do really require that the order of discharge by the trial Magistrate should be interfered with.

3. In this view of the matter the order of the learned Additional District Magistrate setting aside the order of discharge and directing further enquiry cannot be upheld.

4. The Rule is made absolute accordingly. The order of the Additional District Magistrate is set aside and that of the trial Court restored.

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