Sunni Majlas-E-Waqf of Delhi
v.
Custodian of Evacuee Property

Mehar Singh, J.

Custodian alone to decide whether or not a property is an evacuee property and in so deciding he is further to decide in what capacity or under what right and tittle it was the property of the evacuee. In this view, the argument urged on behalf of the appellant is without substance and must be rejected.

In consequence, the appeal is dismissed with costs.

Falshaw, J.

FALSHAW, J.—I agree.

B.R.T.

CRIMINAL MISCELLANEOUS.

Before Bhandari, C. J.

DAULAT RAM,—*Petitioner.*

versus

RAM KISHAN AND OTHERS,—*Respondents.*

Criminal Miscellaneous 575 of 1957.

1957

Dec., 6th

Code of Criminal Procedure (Act V of 1898)—Section 247—Case tried as a warrant case on a complaint alleging offences punishable with imprisonment for more than a year—Charge framed under section 448, Indian Penal Code —Whether becomes a summons case—Complainant absent—Trial Court, whether bound to dismiss the complaint.

Held, that where a complaint is filed alleging offences under sections 417, 506 and 454, Indian Penal Code, which are punishable with imprisonment for a term exceeding one year, and the case is tried as a warrant case but the charge is framed only under section 448, Indian Penal Code, the case becomes a summons case, for an offence under section 448 is punishable with imprisonment for a period of one year, and is governed by the provisions of section 247 of the Code of Criminal Procedure, and not by the provisions of section 259. In such a case when the complainant fails to appear in the Court, the magistrate is under an obligation to dismiss the complaint unless he is of the opinion that the case should be adjourned to another date.

A person charged with a summons case offence is entitled to be acquitted if the complainant is absent, and he cannot be deprived of this right by reason only of the fact that the magistrate has chosen to adopt a particular procedure.

Venkatarama Iyer v. *Sundaram Pillai and others* (1), relied on.

Petition under Section 561-A of Cr. P.C., praying that the order of Shri K. R. Kalia, Magistrate, I Class, Chandigarh, dated 1st July, 1957, be quashed and he be directed to proceed with the case on merits.

G. C. MITTAL, for Petitioner.

G. C. SHARMA, for Respondent.

ORDER

Bhandari, C. J.

This petition under section 561-A of the Code of Criminal Procedure must be dismissed on the short ground that the learned Magistrate was justified in dismissing the complaint under section 247 of the Code of Criminal Procedure.

The facts of the case are simple and not in dispute. Deulat Ram, petitioner, presented a complanit in the Court of a Magistrate of the 2nd Class against four persons under section 417, 506 and 454 of the Penal Code. The learned Magistrate took preliminary evidence, summoned the accused persons, recorded the statements of witnesses, framed a charge under section 448 of the Penal Code against Ram Kishan, accused, ordered the discharge of the remaining three accused persons and forwarded the case to the Additional District Magistrate for transferring the case to a Court of competent jurisdiction. On the 22nd April, 1957, the Additional District Magistrate returned the records to the trial Court for dealing with the case. On the 9th May, 1957, the trial Court issued

(1) A.I.R. 1923 Mad. 439.

a notice to the complainant to appear before him on the 23rd May, 1957. He failed to appear on that date and the Court accordingly directed that the complainant and his counsel should be asked to appear in Court on the 10th June, 1957. On this latter date the complainant did not appear and notices were issued to him to appear on the 1st July, 1957. On the 1st July, 1957, the complainant was not present in Court either in person or through counsel and the trial Court accordingly passed an order directing that the file be consigned to the Record Room. The complainant is dissatisfied with the order and has come to this Court under section 561-A of the Code of Criminal Procedure.

Section 247 of the Code of Criminal Procedure is in the following terms:—

"247. If the summons has been issued on complaint, and upon the day appointed for the appearance of the accused, or any day subsequent thereto to which the hearing may be adjourned, the complainant does not appear, the Magistrate shall notwithstanding anything hereinbefore contained, acquit the accused, unless for some reason he thinks proper to adjourn the hearing of the case to some other day:

Provided that where the Magistrate is of opinion that the personal attendance of the complainant is not necessary, the Magistrate may dispense with his attendance, and proceed with the case."

Section 259 of the Code of Criminal Procedure runs as follows:—

"259. When the proceedings have been instituted upon complaint, and upon

Daulat Ram
v.
Ram Kishan
and others

Bhandari, C. J.

any day fixed for the hearing of the case the complainant is absent, and the offence may be lawfully compounded, or is not a cognizable offence, the Magistrate may, in his discretion, notwithstanding anything hereinbefore contained, at any time before the charge has been framed, discharge the accused."

The learned counsel for the complainant contends that the proceedings in this case were instituted upon complaint that it was tried as a warrant case, that charges were framed against the accused and that it was not within the competence of the trial Court, in view of the provisions of section 259 of the Code of Criminal Procedure, to discharge the accused. It was his duty to proceed with the case on merits and to decide the case in accordance with law.

It is true that the present case was tried as a warrant case for offences under sections 417, 506 and 454 of the Penal Code are punishable with imprisonment for a term exceeding one year. A charge, however, was framed only under section 448 of the Penal Code. A case under section 448 is clearly a summons case for an offence under section 448 is punishable with imprisonment for a period of one year. It may be that this case was tried originally as a warrant case but the fact remains that in substance and effect it is a summons case and cannot be dignified to the status of a warrant case. This case is governed by the provisions of section 247 of the Code of Criminal Procedure and not by the provisions of section 259, and it seems to me therefore, that when the complainant failed to appear in the Court the Magistrate was under an obligation to dismiss

the complaint unless he was of the opinion that the case should be adjourned to another date. A person charged with a summons case offence is entitled to be acquitted if the complainant is absent (*Venkatarama Iyer* v. *Sundaram Pillai and others* (1), and he cannot be deprived of this right by reason only of the fact that the Magistrate has chosen to adopt a particular procedure.

For these reasons I am of the opinion that this petition must be dismissed. I would order accordingly.

B.R.T.

APPELLATE CIVIL.

Before Chopra and Gosain, JJ.

MST. AJMERO AND OTHERS.—*Defendants-Appellants.*

versus

MST. GURDEVI *alias* JANTO,—*Plaintiff-Respondent.*

Regular Second Appeal No. 335 of 1959.

1957

Dec., 6th

Custom—Female heir—Whether succeeds to a life-estate—Right of representation—Whether recognised—Riwaj-i-Am of Ambala, Tehsil and District—Question 42—Whether relates to ancestral property alone—Daughter succeeding to self-acquired property—Whether has an unrestricted right of alienation.

Held, that the general rule of Customary Law is that a female inheriting landed estate (whether ancestral or self-acquired) from a male-holder holds the property on a life-tenure.

Held, that the principle of representation is well recognised in cases of direct as well as collateral succession under custom.

Held, that in the absence of a clear statement or indication to the contrary, the presumption is that the question and answers recorded in the Riwaj-i-Ams relates to ancestral property; and Question No. 42 in the Riwaj-i-Am of

(1) A.I.R. 1923 Mad. 439.