

Gian Chand Sharma, v. Bansi Lal and others, Pandit, J. did not disagree with the Special Bench decision in *Mt. Akbari Begum v. Rahmat Husain* (1), where in it was held by Sulaiman, C.J., that a party could resile from the agreement, before the referee made his statement.

In the present case, it has not been found whether the application of Gian Chand resiling from the agreement was filed previous to the order of the Court appointing Shri Satish Chander as a new referee or afterwards, but it is common ground that the plaintiff had resiled from this agreement before the newly appointed referee had made his report. He could, therefore, under the law, resile from the agreement and ask the Court to decide the case on merits.

In view of what I have said above, this appeal is accepted, the judgment and decree of the lower appellate Court are set aside and the case is sent back to the trial Court for decision on merits. The parties will, however, bear their own costs in this Court. Parties have been directed to appear in the trial Court on 10th October, 1960.

K.S.K.

APPELLATE CRIMINAL.

Before D. Falshaw and Gurdev Singh, JJ.

THE STATE,—Appellant.

versus

GURDIAL SINGH GILL AND OTHERS.—Respondents.

Criminal Appeal No. 10 of 1960.

1960
August. 18th. *Code of Criminal Procedure (V of 1898)—Section 247—Object and meaning of—Complaint filed by the Registrar of Companies—Complainant absent but the accused pleading guilty—Conviction of the accused—Whether legal—*

(1) A.I.R. 1933 All. 861.

Discretion exercised by the magistrate—Whether can be interfered with in appeal or revision.

Held, that the object of section 247 of the Code of Criminal Procedure is to prevent the complainant being dilatory in the prosecution of his case, but it nowhere lays down that in all cases, where the complainant is found to be absent on the date of hearing, the case has to be dismissed. On the other hand, it vests discretion in the Magistrate to adjourn the hearing of the case to some other date, or to proceed with the case even if the complainant is not present at the trial of a summons case. The last part of section 247, Criminal Procedure Code, clearly lays down that the Magistrate need not dismiss a complaint, if he is of the opinion that it would be proper to adjourn the hearing. From this it is evident that the dismissal of the complaint on account of the complainant's absence is not to follow as a matter of course, but before passing such an order the Magistrate has to apply his mind to the facts of the case before him and to consider whether it would not be proper to adjourn the hearing instead of dismissing the complaint. The proviso to this section further empowers the magistrate trying a summons case to proceed with it despite the absence of the complainant. If he finds that the attendance of the complainant is not necessary, he can pass an order dispensing with his attendance and then proceed with the case. This power can be exercised at any stage of the proceedings and, even on a day the complainant is not in attendance. For exercise of such powers no formal application is necessary and the Court can act *suo motu*, if acting under the proviso to section 247, Criminal Procedure Code, it is of the opinion that personal attendance of the complainant is not necessary and the case be proceeded with despite his absence. In cases like the present when the complaint has been filed by a responsible Head of the Department like the Registrar of Companies who cannot be expected to attend each and every case filed in his name, the power to dispense with the attendance of the complainant should be freely exercised by the Courts as his absence at the date of hearing is not likely to prejudice the fair trial. If at any stage of the trial the Courts deem the presence of the complainant necessary, there is nothing to debar them from ordering the complainant to be present at a particular hearing, but to insist that a busy public servant who has

multifarious duties to discharge should attend each and every complaint filed in his name would result in delaying the proceedings and would certainly be not in the interests of justice.

Held, that where on a date of hearing the complainant is absent but the accused plead guilty and the magistrate convicts them on their plea, the conviction is legal and it cannot be said that the accused were entitled to acquittal. Once the magistrate exercises his discretion under section 247, Code of Criminal Procedure, the Court of appeal or revision would be reluctant to interfere with it unless the discretion has been exercised in an arbitrary manner or against judicial principles.

Appeal from the order of the Court of Shri Parshotam Sarup, Sessions Judge, Jullundur, dated the 5th October, 1959, reversing that of Shree Karta Kishan, Additional District Magistrate, Jullundur, dated the 3rd June, 1960, and acquitting the respondents.

K. L. JAGGA, ASSISTANT ADVOCATE-GENERAL, for the Appellant.

G. S. GREWAL, WITH B. S. BINDRA, ADVOCATES, for the Respondents.

JUDGMENT

Gurdev Singh,
J.

GURDEV SINGH, J.—This order will dispose of two Criminal Appeals Nos. 10 and 11 of 1960, as the points arising for decision in both the cases are the same.

On 18th December, 1958, the Registrar of Companies Punjab and Himachal Pradesh, instituted two complaints in the Court of Additional District Magistrate, Jullundur, under sections 220/162 and 159/162 of the Companies Act against Messrs Malwa Agricultural Society, Ltd., and its four Directors, namely, Gurdial Singh Gill, Dr. Autar Singh Gill, Dr. Iqbal Singh and Shri Jagdish Singh (respondents before us). It was alleged

that the Company and its Directors had committed default and failed to file the annual balance-sheet and the return, which should have been furnished to the Registrar at the latest by 22nd October, 1958, in spite of notices issued to each of them individually.

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On 3rd June, 1959, when the summary trial in both the cases commenced all the four Directors of the Company appeared and pleaded guilty. Thereupon the learned Additional District Magistrate convicted each of the Directors in both the cases. In the case in which they were prosecuted under sections 220/162 of the Companies Act, Gurdial Singh, respondent, Managing Director, was sentenced to a fine of Rs. 200 while the other three Directors Dr. Autar Singh, Dr. Iqbal Singh and Shri Jagdish Singh, were ordered to pay a fine of Rs. 100 each. In default of payment of fine Gurdial Singh was directed to undergo two months' simple imprisonment and the remaining Directors to one month's imprisonment of the same nature. In the other case under sections 159/162 Companies Act, a fine of Rs. 100 was imposed upon Gurdial Singh and Rs. 50 on each of the other three Directors. In default of payment Gurdial Singh was ordered to undergo one month's and others to 15 days' simple imprisonment. The learned Magistrate, however, passed no order with regard to the acquittal or conviction of the Malwa Agricultural Society, Ltd., in any of the two cases.

Despite the fact that all the Directors of the Company had been convicted on their admission of guilt, they went up in appeal in both the cases. The learned Sessions Judge, Jullundur, while noting that the accused had been convicted on their own admission of guilt accepted their appeals, being of the opinion that since the Registrar of the

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Companies (complainant in the case) was not present at the hearing in the trial Court, they were entitled to acquittal and the Magistrate had no power to convict them. Aggrieved with this order of the learned Sessions Judge, dated 5th October, 1959, in both the cases referred to above, the State has come up to this Court in appeal.

On going through the record we find that the order of the learned Sessions Judge acquitting the accused in both the cases is not only against the provisions of the law but also without jurisdiction. The trial of the present respondents by the Magistrate was a summary one under section 260, Criminal Procedure Code. Section 414 of the Code lays down that in such a case there shall be no appeal by a convicted person if the Magistrate acting under section 260 passes a sentence of fine not exceeding Rs. 200. The various sentences awarded to the accused in the two cases which have given rise to these appeals have been set out above. Gurdial Singh (respondent), the Managing Director of the Company, in one case was sentenced to pay a fine of Rs. 200 and in the other Rs. 100. Since sentences of none of the accused exceeded Rs. 200 it is obvious that no appeal lay against the orders of their conviction. The learned Sessions Judge thus acted without jurisdiction in entertaining the appeals and passing the order acquitting the present respondents.

Even on merits the order of the learned Sessions Judge cannot be sustained. He was apparently labouring under the impression that once the complainant in a summons case was found to be absent the Magistrate had no option but to dismiss the complaint and acquit the accused. This is clearly a mistaken view of law. Section 247, Criminal Procedure Code, runs as under :—

“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 :*

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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."

The object of this provision of law is to prevent the complainant being dilatory in the prosecution of his case, but it nowhere lays down that in all cases, where the complainant is found to be absent on the date of hearing, the case has to be dismissed. On the other hand, it vests discretion in the Magistrate to adjourn the hearing of the case to some other date, or to proceed with the case even if the complainant is not present at the trial of a summons case. The last part of section 247, Criminal Procedure Code, clearly lays down that the Magistrate need not dismiss a complaint, if he is of the opinion that it would be proper to adjourn the hearing. From this it is evident that the dismissal of the complaint on account of the complainant's absence is not to follow as a matter of course, but before passing such an order the Magistrate has to apply his mind to the facts of the case before him and to consider whether it would not be proper to adjourn the hearing instead of dismissing the complaint.

The proviso to this section is an important one, though it is frequently ignored. It further empowers the Magistrate trying a summons case to

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proceed with it despite the absence of the complainant. If he finds that the attendance of the complainant is not necessary, he can pass an order dispensing with his attendance and then proceed with the case. This power can be exercised at any stage of the proceedings and, in my opinion, even on a day the complainant is not in attendance. For exercise of such powers no formal application is necessary and the Court can act *suo motu*, if acting under the proviso to section 247, Criminal Procedure Code, it is of the opinion that personal attendance of the complainant is not necessary and the case be proceeded with despite his absence. In cases like the present when the complaint has been filed by a responsible Head of the Department like the Registrar of Companies who cannot be expected to attend each and every case filed in his name, the power to dispense with the attendance of the complainant should be freely exercised by the Courts as his absence at the date of hearing is not likely to prejudice the fair trial. If at any stage of the trial the Courts deem the presence of the complainant necessary, there is nothing to debar them from ordering the complainant to be present at a particular hearing, but to insist that a busy public servant who has multifarious duties to discharge should attend each and every complaint filed in his name would result in delaying the proceedings and would certainly be not in the interest of justice.

In the present cases the Registrar of Companies had made formal applications praying for his exemption from personal attendance at the trial. Unfortunately no order in this connection was passed by the learned Additional District Magistrate. Though the Magistrate should have promptly disposed of these applications, yet nothing could prevent him from exercising his power

under the proviso to section 247, Criminal Procedure Code, at a later stage to dispense with the attendance of the Registrar of Companies.

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In support of his view that the Magistrate had no option but to dismiss the complaint and acquit the accused once the complainant had absented himself, the learned Sessions Judge has relied upon *Arjandas Tulsidas v. G. K. Bhagat* (1), and our attention has also been drawn to a Single Bench decision of this Court in *Daulat Ram v. Ram Kishan and others* (2). There is nothing in the Ajmer decision to warrant the contention that irrespective of the power that vests under proviso to section 247, Criminal Procedure Code, the Court has to dismiss a complaint in a summons case once the complainant is found to be absent. In the Punjab case *Bhandari, C.J.*, relied upon a decision of the Madras High Court in *Venkatarama Aiyar v. Sundaram Pillai* (3), and observed—

“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.*”

While applying the above authority the learned Sessions Judge in the present cases ignored the underlined portion of these observations. Apart from this I find that neither in the Punjab case nor in Madras case quoted above, any notice was taken of the proviso to section 247, Criminal Procedure Code. The decision in *Ajmer Municipal Committee v. Jethanand Wadhmal* (4), is more in point. While dealing with a complaint instituted by a

(1) A.I.R. 1954 Ajmer 31(2).

(2) A.I.R. 1958 Punj. 317.

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

(4) A.I.R. 1956 Ajmer 21.

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public servant the learned Judicial Commissioner observed—

“Under the proviso, the Magistrate may in his discretion dispense with the personal attendance of a public servant complainant if his personal attendance is not required. The Magistrate may exercise a discretion *suo motu* or on the application of the public servant concerned.”

As observed by Mosley, J., in *U Tin Maung and another v. The King* (1), though section 247 lays down the general principle that an accused in a summons case is entitled to acquittal if the complainant is absent without sufficient cause, yet the section itself, and the proviso attached to it, indicate beyond any manner of doubt that the Magistrate has a discretion in proper cases to adjourn the hearing, or to proceed with the case by exempting the complainant public servant from appearance. It may be noticed here that prior to the recent amendment of the Criminal Procedure Code, the proviso to section 247, Criminal Procedure Code, empowered Magistrate to exempt from appearance the complainant only if he happened to be a public servant, but as a result of Criminal Procedure (Amendment) Act No. 26 of 1955, the power to dispense with the attendance of the complainant who is not a public servant has also been conferred upon the Magistrate. This indicates that the Magistrates dealing with the summons cases are not to dismiss the complaint merely because the complainant happens to be absent, but they should apply their mind to the facts of each case and in fit cases dispense with the attendance of a complainant and to proceed with the trial so that justice be done to the parties.

(1) A.I.R. 1941 Rangoon 202.

In the two cases before us the learned Sessions Judge acquitted the respondents under mistaken impression that the respondents were entitled to acquittal as on the date of the the hearing before the Additional District Magistrate the complainant happened to be absent. His attention does not appear to have been drawn to the fact that the trial Magistrate had the power to adjourn the cases and if he deemed it proper to proceed with the cases and dispense with the attendance of the complainant. In the present cases it appears that the learned Additional District Magistrate decided to act under the proviso and that is why he neither adjourned the cases, when the complainant was found to be absent, nor acquitted the respondents. Thus he acted quite properly because the accused were not contesting the allegations and had confessed their guilt pleading guilty. In the circumstances there was no justification for the learned Sessions Judge to interfere with the order of the Magistrate recording the respondents' convictions at their own admission of guilt. Once the Magistrate exercises his discretion under section 247, Criminal Procedure Code, the Courts of appeal or revision would be reluctant to interfere with it unless the discretion has been exercised in an arbitrary manner or against judicial principles.

For the reasons recorded above I accept both the appeals and set aside the order of the learned Sessions Judge restoring that of the Additional District Magistrate in both the cases, as a result of which all the four respondents stand convicted under sections 220/162 and 159/162 of the Companies Act. For their conviction under sections 220/162, Companies Act, Gurdial Singh shall pay a fine of Rs. 200 or in default undergo simple imprisonment for two months while the other three Respondents, Dr. Autar Singh, Dr. Iqbal Singh and

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Shri Jagdish Singh shall pay Rs. 100 each as fine or in default suffer one month's simple imprisonment.

In the other case under sections 169/162, Gurdial Singh shall pay Rs. 100 as fine or in default undergo one month's simple imprisonment and the other three Respondents a fine of Rs. 50 each in default of which they shall suffer simple imprisonment for 15 days. On realization of the fine the Complainant shall be paid Rs. 100 in the first case and Rs. 50 in the later as compensation.

Before closing I would like to point out that the learned Additional District Magistrate did not pass any order with regard to the Company (Messrs Malwa Agricultural Society, Ltd.), that had been impleaded as accused in both the cases. Since the conviction of this Company has not been recorded by the Magistrate, his order in both the cases is tantamount to acquittal of the Company. In view of the admission of guilt by all the Directors of the Company, including the Managing Director who represented Messrs Malwa Agricultural Society, Ltd., the proper course for the Magistrate was to convict the Company as well, but since the State has not appealed against the Company, nor impleaded it as a respondent, there is no question of our recording its conviction, though we feel that the acquittal of the Company by the Magistrate was wrong.

Falshaw, J.

FALSHAW, J.—I agree.

B.R.T.

CIVIL MISCELLANEOUS.

Before S. S. Dulat and Prem Chand Pandit, JJ.

BELI RAM *alias* BELI MAL AND ANOTHER.—*Petitioners.*