

Bhagwan Sahai vs Moti Lal on 19 November, 1951

Equivalent citations: AIR1953ALL402, AIR 1953 ALLAHABAD 402

Author: Raghubar Dayal

Bench: Raghubar Dayal

ORDER

Raghubar Dayal, J.

1. Moti Lal filed a complaint for various offences against Bhagwan Sahai. The complaint was dismissed for default of the complainant in appearing before the Court, presumably on 22nd May, and the accused were discharged. On the same day the complainant filed a second complaint. The learned Magistrate proceeded against the accused on that complaint. All the accused put in appearance on 29-8-1950. The learned Magistrate ordered for the recording of evidence. That day an application was filed on behalf of the complainant praying that the complainant had put in an application for the restoration of the case on the same day on which the previous case had been disposed of and that there was good cause for the delay, that according to law as enunciated in *In re Wasudeo Narayan*, A. I. R. 1950 Bom. 10, there was no necessity for any fresh trial and that the case be taken up after the stage when the order of dismissal was passed. The learned Magistrate accepted this application on 6th September and ordered as prayed. It is against this order that the accused has come up in revision his contention being that there was no provision in criminal law for reviving a complaint which had been dismissed for default in appearance.

2. I agree with the contention for the applicant that a complaint dismissed in default under Section 259, Criminal P. C., on account of the non-appearance of the complainant cannot be revived in the sense that the order of dismissal and discharge of the accused be set aside and that the accused be proceeded against in the same proceedings. The order of discharge is to be set aside in the manner provided by the Code of Criminal Procedure. Sections 436 and 437, Criminal P. C., deal with cases in which the accused had been discharged. It may be mentioned, however, that in the present case there was really no application for restoration. What was filed on the date on which the case was discharged was a second complaint. This mis-statement of fact appears to have been made in the application with a view to take advantage of the Bombay ruling, in *In re Wasudeo Narayan*, A. I. R. 1950 Bom. 10, and to save the inconvenience of going through the same proceedings which had been transacted in the previous case. This was not fair.

3 Section 5, Criminal P. C., provides that :

"All offences under the Indian Penal Code shall be investigated into, tried and otherwise dealt with according to the provisions hereinafter contained."

There is no provision in the Code of Criminal Procedure for the revival of a complaint which had been dismissed under Section 259, Criminal P. C., or for the setting aside of the order of discharge by the trial Court. It should follow, therefore, that neither such an order of reviving the complaint can be passed nor an order of discharge can be set aside. Similar was the view expressed in *O. S. Venkatasubba Ayyar v. T. M. Soundararaja Ayyangar*, A. I. R. 1929 Mad. 260, and in *Phonisia v. Emperor*, A. I. R. 1935 ALL., 59, in which case the order of discharge was passed on merits.

4. I, therefore, allow this application, set aside the order of the learned Magistrate dated 6-9-1950 and order that the case started on the complaint filed on 22-5-1950 be proceeded with according to law.