

SUPREME COURT OF INDIA

Rajiv Gupta

Vs.

State of H.P.

(B.N.Kirpal and S.Rajendra Babu JJ.)

15.01.1999

ORDER

The Text below is only a summarized version of the order pronounced

The High Court was wrong in upsetting the decision of the Magistrate that held that the appellants were entitled to be discharged relying upon the decision of the Supreme Court in Common Cause v. Union of India. The High Court in revision referred to the classification given in the above case and held that the appellants were not entitled to be discharged as the no charge was framed by the Magistrate. If a trial for an offence punishable with imprisonment up to three years has been pending for more than two years and it has not commenced then the criminal court should discharge and acquit the accused. In the classificatory order in the above case, it is provided that in a warrant case, the trial will be regarded as having commenced when charges are framed under Section 240 Cr.P.C. But in this case as the charge has not been framed, the trial had not commenced and the Magistrate was right in discharging the appellants. The appeal is accordingly allowed.