

# PATNA HIGH COURT

State of Bihar

Vs

Deodar Jha

Government Appeal No. 19 of 1953

(Misra and Banerji, JJ.)

22.03.1957

## JUDGMENT

### **Banerji, J.**

1. This appeal under Section 417, Criminal Procedure Code, is against an order of acquittal passed by Mr. S. C. Gupta, Judicial Magistrate, 1st Class, Patna, in a trial under Section 26, sub-section (1) of the Industrial Disputes Act (Act 14 of 1947).

2. The facts culminating in the trial of the 25 respondents and their subsequent acquittal may be summarized as follows:- There is a Limited Company, known as the Patna Electric Supply Company, Limited, (henceforth to be described as the Company) for supply of electricity to the people at Patna, and the head of the local management in 1952 was Sri A. V. Ramaswami (P. W. 1). The workers of this Company have their own Union, known as the Patna Electric Supply Workers' Union, (hereafter to be described as the Union) with one Sri Ranen Ray as the President and Sri Damodar Jha as the General Secretary. In March 1952, the Union made certain written demands and, in due course Government referred the disputes to a Tribunal for adjudication. The notification by which the Industrial Tribunal was constituted is dated the 29th of March, 1952, and has been marked as Exhibit 9. Annexure "A" shows the nature of the dispute between the Company and the workers under it.

3. When this adjudication was pending before the Industrial Tribunal, one Ramdeo Rai, an employee of the Company, was suspended by Sri Ramaswami (P. W. 1) for wilful disobedience of his order which was to the effect that he should allow three other workers to live in the same room. Suspension of Ramdeo Rai by the Company was communicated to Sri R. N. Sharma (P. W. 12), then Assistant Commissioner of Labour. P. W. 12 was approached on behalf of the Union and was told that Ramdeo's suspension was unjustified. The Union requested P. W. 12 to intervene in the matter and make an enquiry. Accordingly, P. W. 12 fixed the 20th of November, 1952 for making a local enquiry and informed the Company as well as the Union. During the enquiry, P. W. 12 saw an altercation going on between two sets of workers. It appears that some workmen took up the cause of Ramdeo and some of the other three who had complained against him for having thrown them out of the room.

There was exchange of hot words between the two parties in the presence of P.W. 12 followed by an exchange of blows and hurling of shoes. A workmen was hit with a bamboo stick, hurled by some one. Finding that the position was out of control, P.W. 12 informed the Police Station nearby and also submitted a report to the Deputy Commissioner of Labour. He, further, informed the Company of the facts which had taken place in his presence.

4. P. W. 1, in the meantime had also received two reports from the Assistant Mains Engineer (P. W. 3) and the Mains Superintendent (P. W. 2) regarding the occurrence of the 20th of November, 1952. P. W. 1, accordingly, took disciplinary action against Ramdeo and a few others who were reported against by P. Ws. 2 and 3 and suspended them forthwith. He, then, applied to the Industrial Tribunal for necessary permission to dismiss these workers as adjudication proceedings were pending in its Court. The workmen concerned also filed petitions before the Tribunal under Section 33A of the Industrial Disputes Act.

5. On the 26th of November, 1952, P.W. 1 received a notice signed by the General Secretary of the Union intimating him that the employees of the Company proposed to go on a token strike from 8 a. m., on the 29th of November, 1952, to 8 a. m., on the 30th of November 1952, unless their demands were fulfilled. Their demands were in the nature of redress of alleged victimisation of Ramdeo Rai and three others who, as already stated, had been suspended by, P. W. 1 for alleged riotous acts. The demand was for the restoration of their jobs with retrospective effect and also for concession of pending demands other than those referred to the Tribunal by the notification (exhibit 9). P. W. 1 replied to the notice pointing out that the threatened token strike would be illegal under the labour laws. P. W. 12 also wrote to the General Secretary of the Union on the 27th November, 1952, advising him not to organise the strike because the same would be against law. There was a meeting of the workmen of the Union on 27th November, 1952, and the 28th November, 1952, and it appears that the workers resolved to go on strike on the dates fixed. P. W. 1 then informed his consumers of the impending strike and approached the Government for assistance, which was duly given to him for maintaining a continuous supply throughout the period of the token strike of 24 hours commencing from 8 a. m., on the 29th of November, 1952, to 8 a. m. on the 30th of November, 1952.

6. The token strike commenced and ended as per notice served by the General Secretary of the Union, and it was alleged by the prosecution that the 25 respondents joined the strike, ceased to work and did not attend to their duties during that period. P. W. 12 then received the Government's sanction (Exhibit 15) authorising him to file a complaint against the respondents. He, then filed the complaint which has been marked exhibit 16. According to the petition of complaint, the aforesaid strike was in contravention of Section 23 (b) of the Industrial Disputes Act as one staged during the pendency of an industrial proceeding before the Tribunal and was, therefore, illegal under Section 24 of the Act. The strike was also illegal for want of adequate and proper notice as required under Section 22 (1) (b) of the same Act.

7. The respondents were summoned to meet their trial under Section 26 (1) of the Act by the Sub-divisional Magistrate at Patna, and the case was later transferred to the file of Sri S. C. Gupta, Judicial Magistrate, for disposal.

8. The learned Magistrate formulated several points and held that there was a lock-out by the employers, that is, by the Company, that the strike was not illegal and that the accused persons

were not guilty of the charge leveled against them. He found, on evidence, that the prosecution had not proved clearly even the absence of all the accused persons and a concerted action on their behalf. Against this order of acquittal, the Government have appealed.

9. Before I discuss the legal position between the employers and the employees in this case in order to ascertain whether the strike was legal or illegal, I would like to consider first whether there is evidence against the respondents showing that they willfully abstained from their duty during the period of the token strike. The prosecution case is that all the 25 respondents refused to do any work during that period, but the finding of the learned Magistrate is that the prosecution has not been able to prove the willful absence of all the accused persons during that period. It has to be judged, therefore, whether this finding of the learned Magistrate is based on facts. There can be no doubt that with respect to the majority of the respondents the prosecution suffers from considerable laches. Evidence has not been adduced with respect to most of the respondents if they had a duty to attend to during that period and that they deliberately stayed away from the company's premises. P. W. 2 stated in cross-examination that there were about 360 workmen employed in the Mains Department and about 280 workmen were on strike on that day. He said that this number included those who were on leave and off their duties. He deposed further that 33 of the Mains Department were on leave. He was not in a position to say how many were off their duty during the relevant period. Attendance registers have also not been legally proved with respect to the majority of the respondents showing that they were marked absent on account of their refusal to work. To bring home the charge against the individual accused, it was the duty of the prosecution to produce legal evidence showing that they (the accused) were not on leave, were not off their duties and that they were to report and work during that period. This was all the more important as the employees, admittedly, work in shifts in this Company.

10. About the workmen who were employed in the Patna City Office of the Company it cannot, however, be said that the prosecution has not been able to prove their wilful absence during that period. The workers whose duty was within this Patna City Office are Abdul Jabbar, Kusheshwar, Sakaldeo, Paltu and Samoo. Sri S. C. Chatterji (P. W. 3) was the Assistant Mains Engineer of the Company on those dates, and he has stated that on the 28th of November, 1952, in the afternoon, he advised his staff to report at the City Office for attendance at the usual hours. He went to his office at about 8 a. m., on the 29th November, 1952, and, although he waited for some time, the workers did not come. He then took the attendance register himself and went to the gate and took the attendance personally. There was a large gathering, and the workers under him responded as being present. These workers were, therefore, marked present and P. W. 3 then informed his staff that he was going to distribute work as usual.

Several members of the staff, however, refused to work. He explained to them that, if any of them did not work on that day he would be marked absent and that he would call out the name of each person again and only those persons who were willing to work should respond and they would be marked present. After making the position clear, P. W. 3 repeated the calls from the beginning to the end, but he found several, who had at first responded to his call, did not respond the second time. He then struck off the "present" mark against their names and marked them absent. Amongst those were the respondents Abdul Jabbar, Kusheshwar Misra, Sakaldeo Paltu and Samoo. P. W. 3 has stated that Abdul Jabbar was standing at a distance of 10 feet from him and Kusheshwar Misra returned the key to him and went away. Sakaldeo, Paltu and Samoo had also responded first, but, on second call, they refused to respond and, ultimately, refused to work. So far as these five accused are concerned, there is the sworn testimony of P.W. 3 that they had

come to the Patna City Office and that, at first, they had responded to his call, but they refused to work and to respond to the second call after he explained to them that he was going to distribute work amongst them, as usual, and that those who would not work on that date would be marked absent although they might have responded to his first call. About Abdul Jabbar, it is said that he did not join the work and he refused to work. Kusheshwar Misra returned the key to him, gave charge of the cash and went away. The other three also, according to P.W. 3, refused to work. It is difficult to disbelieve P.W. 3, who was a responsible officer of the Company at that time and who at present has nothing to do with this Company, having joined the Damodar Valley Corporation. He was no longer a servant of the Company when he deposed in this case and his statement was supported by the attendance register (exhibit 3/8 to 3/12) written and initialed by him.

11. The learned Magistrate has discussed the evidence of this witness relating to what he deposed about these five accused, but has not expressed any opinion as to why he should be disbelieved. There was total lack of any justification for not accepting the evidence of P.W. 3 whom I consider to be an independent witness. His deposition makes it clear that at least these five accused wilfully refrained from doing any work on that day, although, it was their duty to work during that period in the Patna City Office of the Company. No attempt has been made on behalf of these five accused to justify their absence, and it can fairly be inferred that they were neither on leave nor on different shifts at that time. As regards the others, I cannot but hold that the evidence is not sufficient. It has not been disclosed through the depositions of the prosecution witnesses that the accused, other than the five referred above, were, according to the terms of their service, to present themselves at the premises of the Company for doing the work allotted to them. It is not necessary to discuss in detail the evidence of the prosecution witnesses relating to the alleged absence of those accused and, in my opinion, in absence of proper materials on the record, it cannot be held that they purposely absented themselves from their work during the period of the token strike.

12. It has next to be considered whether the action of these five accused was a concerted one and was the result of a common understanding to constitute a "strike" under the Act. "Strike" has been described by Section 2 (q) of the Act to mean "a cessation of work by a body of persons employed in any industry acting in combination, or a concerted refusal, or refusal under a common understanding, of any number of persons who are or have been so employed to continue to work or to accept employment". The facts of this case disclose clearly. (1) there was a dispute relating to a room in a building belonging to the Company between some of its workers; (2) some of the workers indulged in riotous acts in presence of the Conciliation Officer and two officers of the Company; (3) reports were submitted to the Manager of the Company (P.W. 1) and he suspended those workers who exhibited an unmannerly conduct at the time of the enquiry; (4) as a result of the suspension, the Manager was served with a notice that a token strike was going to be staged for 24 hours commencing from 8 a.m. on the 29th of November, 1952; (5) the Union was informed by the Conciliation Officer and also by the Manager that such a strike would be illegal for contravention of Section 22 (1) (b) of the Act; and (6) in spite of the attention of the Union having been drawn to this situation, a large number of workers, including the five respondents referred above, ceased to work and refused to do any work when asked by their superior. There can be no doubt, therefore, that these five respondents had ceased to do work in a concerted action with the other workmen of the Company and that they were acting in combination. The act of those workmen or employees, therefore, would amount to "strike" within the meaning of Section 2 (q) of the Act.

13. It has been urged on behalf of the respondents that it was not a strike in the real sense of the term, but it was a cessation from work for a little while only to express the employees' views about the punishment meted out by the Company to those workers who had been suspended by the Manager on account of alleged indulging in riotous behaviour before a public servant. According to Mr. Ghosh and Mr. Roy, who followed him, stoppage of work or refusal to do work by some workmen in combination for a short while only cannot be termed a "strike". The distinction tried to be drawn by the learned Advocates is very thin, indeed. A token which is something serving to represent or indicate some fact, event or feeling is akin of such facts, events or feelings which it represents, and the only way to judge whether such stoppage of work for a short duration amount to "strike" is to look to the clear meaning of Section 2 (q) of the Act. A "strike" may be for a short period or for a long period. The length of time has nothing to do with the meaning of "strike" as given in the Act. Whatever doubt there might have been at one time, it is now resolved by the decision in the *Buckingham and Carnatic Co., Ltd. v. Workers of Buckingham and Carnatic Co. Ltd*<sup>1</sup>, in which stoppage and refusal to work for a few hours only was held to amount to a 'strike' within the definition of Section 2 (q) of the Act on the finding that there was concert and combination of the workers in stopping and refusing to resume work on a particular night.

14. It has rightly been argued on behalf of the respondents that every strike is not illegal and that the workers enjoy the fundamental right to resort to strike whenever they are so pleased in order to express their grievances or to make certain demands. This fundamental right has not been challenged and it has been held that such a right cannot, in any way, be limited by Standing Orders. Under the Indian Law, strikes are only illegal when penalties have been imposed for them for contravention of the provisions of Sections 22, 23 and 24 of the Act. The Act has aimed at blending the rights and liabilities of the employers and the employees as best as possible to suit the conditions of this country and has, therefore, enacted provisions which are not parallel with those obtaining in other countries. Accordingly, it would be unwise to refer to decisions of Courts of countries other than India in order to interpret the sections in the Industrial Disputes Act, unless, of course, the provisions are shown to be exactly the same. Indeed, the various decisions cited before us, on careful scrutiny, have been found to be inapplicable to the law relating to industrial disputes as prevailing in India. I shall, therefore, endeavour to be guided by the ordinary grammatical meaning of the various sections which affect the present dispute between the parties. It is not denied that the Company is a 'public utility service' within the meaning of Section 2 (n) of the Act as it is an industry which supplies power, that is, electricity, to the public at Patna. The employees working in such an industry are not allowed to contravene Section 22 of the Act. The relevant portion of Section 22 may be better stated here:

- "22. Prohibition of strikes and lock-outs. - (1) No person employed in a public utility service shall go on strike in breach of contract.
- (a) without giving to the employer notice of strike, as herein-after provided, within six weeks before striking; or
  - (b) within fourteen days of giving such notice; or
  - (c) before the expiry of the date of strike specified in any such notice as aforesaid; or
  - (d) during the pendency of any conciliation proceeding before a conciliation officer and seven days after the conclusion of such proceedings.

(2), (3), (4), (5) and (6) -  
x x x"

The reason why this section was enacted is clear. The intention of the Legislature was that there should be enough safeguards in matters of public utility services as, otherwise, it would result in great inconvenience to the society and the general public. The employee or the worker was not restrained from going on strike, but it was required of him to fulfil certain conditions as enumerated in the four different clauses of sub-section (1). It is not denied in the present case that 14 days' notice was not given to the Company by the Union. There is no controversy about the non-fulfilment of the four conditions as given in the four clauses following sub-section (1). A strike of the employees or workers, will, therefore, automatically become an illegal one punishable under Section 26 of the Act which runs as follows :

"26, Penalty for illegal strikes and lock-outs.- (1) Any workman who commences, continues, or otherwise acts in furtherance of, a strike which is illegal under this Act shall be punishable with imprisonment for a term which may extend to one month, or with fine which may extend to fifty rupees, or with both.

(2) X X X X X"

Learned Counsel, appearing on behalf of the respondents, have tried to wriggle out of this position by arguing that the prosecution has not only to prove the existence of a strike in contravention of the provisions of Section 22, but it has further to prove that that strike was in breach of contract. According to them, the sections are penal in nature and, therefore, it is imperative on the prosecution to prove each and every provision contained in the sections before the accused could be held guilty. Argument is, accordingly, advanced on behalf of the respondents that there is no proof of any strike in breach of contract in absence of the Standing Order of the Company which might have indicated the nature of the agreement between the employers and the employees and the breaches thereof. On the other hand, it has been argued by the learned Advocate General, appearing on behalf of the State, that the expression "in breach of contract" is merely explanatory of the word "strike" and whenever there is a strike it follows as a matter of course that the contract between the employer and the employee has been broken. To this, the reply has been that the expression "breach of contract" has a special meaning and it is not a surplusage nor, in any way, explanatory to expand or explain the meaning of the word "strike". I am inclined to agree with the view that the expression "breach of contract" has not been introduced into that section without any meaning, whatsoever. The expression should not be taken as one that necessarily follows from "strike". The provisions of this section read with those of Section 26 are of a penal nature and have to be construed strictly. In cases like this the prosecution cannot withhold evidence of breach of contract, and it is its duty to prove to the Court that the accused, according to the contract, were to turn up and work in the Company. There cannot, however, be some set formulae for proving breach of contract on the part of the employers and employees. The proof will depend upon the facts and circumstances arising in a particular case. At the same time, it may be remembered that the expression "breach of contract" does not mean breach of a condition of service, and it is not incumbent on the prosecution to produce and prove the standing rules in order to establish that the employees were guilty of breaking the contract. There is no justification for any argument that the prosecution was bound

in law to show from the standing rules that the employees had agreed not to go on strike, but, even then, this part of the agreement they did not adhere to. In this particular case, as already mentioned, the prosecution, through P.W. 3, has proved that five out of the total number of respondents came to the Patna City Office and responded when their names were called out. They refrained, however, from joining their work, when the same was distributed to them by P.W. 3, although it was brought to their specific notice immediately by P.W. 3 that, if they did not do any work, they would be marked absent. They stayed away and did not perform their duties, as they were bound to render to the Company and this, therefore, was in contravention of the terms of their service. On these material facts, I hold that a large number of workers in the Company, including the five respondents aforesaid, did go on strike in breach of contract. As pointed out before, a strike of this nature is prohibited in law in public utility services unless the conditions referred to in the four clauses (a), (b), (c) and (d) are satisfied. These, admittedly, have not been done by the employees and, hence, there is no other alternative, but to hold that the five respondents are guilty for illegal strike under Section 26 of the Act.

15. The complaint against the respondents was also for contravening the provisions of Section 23 (b) of the Act. The relevant portion of Section 23 for consideration in this case may be stated here:

"23. No workman who is employed in any industrial establishment shall go on strike in breach of contract and no employer of any such workman shall declare a lock-out -

(a) x x x x x

(b) during the pendency of proceedings before a Tribunal and two months after the conclusion of such proceedings;

(c) x x x x x"

It has been proved by the prosecution in this case, as already narrated, that for certain industrial disputes between the Company and the workers in March, 1952 a notification (Government Notification No. III/D/-3027/52-L(A)-65, dated the 29th March, 1952), exhibit 9, was issued whereby, in exercise of powers conferred by Section 7 read with sub-section (1) of Section 10 of the Act (Act 14 of 1947) the Governor was pleased to constitute an industrial tribunal and referred the disputes to the same for adjudication. The adjudication had not been completed when this so-called token strike was resorted to by the workers of the Company. It has been held in *Provat Kumar Kar v. William Trevelyan Curties Parker*<sup>2</sup>, that the object of clauses (a) and (b) of Section 23 is 'to ensure an atmosphere of calm and peace during an adjudication upon an industrial dispute and accordingly all disputes are forbidden during the said period'. The words of clauses (a) and (b) of this section, according to this decision, cover all strikes and lock-outs irrespective of the subject-matter of the dispute being different from the subject-matter of the dispute pending before a Tribunal or before a Conciliation Authority. It is true that the resolution regarding alleged victimisation of workers and certain alleged pending demands were not for consideration by the Tribunal, but that does not make any difference inasmuch as the workers are not permitted in law to resort to a strike during the pendency of a proceeding before a Tribunal or a Board according to the conditions laid down both under Section 22 and Section 23 of the Act.

16. It has been argued further on behalf of the respondents that, as there was an illegal lockout by the Company of the four or five workers in connection with the accommodation dispute of a

room in Karmangal Gali of Patna City, the strike, even if it offended Sections 22 or 23 of the Act, became justifiable and legal on the strength of the provisions of sub-section (3) of Section 24. This sub-section is in the following words :

"(3) A lock-out declared in consequence of an illegal strike or a strike declared in consequence of an illegal lock-out shall not be deemed to be illegal."

The question is whether this alleged token strike was declared in consequence of the order of suspension by the Company which amounted to an illegal lock-out. In other words, the point of controversy can be narrowed down to this consideration whether taking up of any measure by way of discipline amounts to a lock-out. If the order were considered to amount to a lock-out in this case, it necessarily follows that it was illegal because it was passed during the pendency of a proceeding before a Tribunal. The facts may be recalled here. One Ramdeo was allotted a room in a particular

building belonging to or in possession of the Company. According to the Company, three other employees were also to use this room along with Ramdeo, but, according to Ramdeo, he, alone, was entitled to enjoy this room. The Manager, after an enquiry, ordered that three other workers were also to use the room. On Ramdeo not carrying out the order, he was suspended. The parties then approached the Conciliation Officer (P.W. 12) to hold a local enquiry and to settle the dispute. While he was holding the enquiry, and in his very presence, Ramdeo and four or five others indulged in riotous behaviour, and this fact was brought to the notice of the Manager both by the two officers of the Company and the Conciliation Officer, himself, all of whom, naturally, felt very much humiliated when, in total disregard of their feeling and position, the workers collected there, used abusive language against one another, hurled shoes and beat up a particular worker of a rival Union. The Manager then, as a disciplinary measure, suspended Ramdeo and four or five other workers who were said to have been in that occurrence and stated in the suspension letter (Ex. A/1) that he was seeking permission of the Chairman, Industrial Tribunal, Bihar, for their dismissal.

I fail to understand how a measure like this in order to maintain discipline in the Company can be held to be a lock-out. "Lock-out", according to clause (1) of Section 2 means "the closing of a place of employment, or the suspension of work, or the refusal by an employer to continue to employ any number of persons employed by him". It implies either the closing of the place of employment, suspension of work or refusal by an employer to continue to employ any number of persons employed by him. The measure adopted by the Company in this case by suspending four or five workmen, who had taken part in that occurrence, was with the ultimate view of terminating their service and, accordingly, the act on the part of the Company cannot constitute a lockout. In case of a lock-out, the service, that is to say, the relationship of employer and employee continues and does not come to an end. In this particular case, when those workers were suspended, it was done with a view to terminate further relationship between them and the Company as employees and employer, respectively. A previous dispute was then before a Tribunal and, therefore, the Company was not in a position to end their services abruptly. The Company, therefore, required the permission of the Tribunal subject to which they (Company) considered the relationship as employer and employee between those workers and themselves as having come to an end for good. In this view of the matter, the suspension order passed by the Company on those four or five workers cannot constitute a lock-out within the meaning of Section 2 (1) of the Act.

17. At this place it may be necessary to dispose of another branch of argument advanced on behalf of the respondents that they cannot be made liable in absence of any evidence of their memberships in the Union. It is true that, except in the case of respondent No. 1, there is no material on the record to show that the other respondents were members of the Union, too, and that they were party to the resolution which was served on the Company. Although there is dearth of particulars on this matter, one would have expected a bolder stand on the part of the respondents when the facts appear to indicate that those who had taken part in the strike on the days concerned had not only full knowledge of the resolution, but, expressly or implied, they were party to it. However, the connection of the respondents with the resolution concerned has, in the present matter, little importance. Notice has nothing to do with the present 'strike' under consideration. It does not make it legal nor does it adversely affect the sponsors. The only point for determination in this particular case is whether the persons, accused or any number of them, acting in combination and under a common understanding, refused to work in breach of contract. This point, accordingly, has, to my mind, no substance.

18. It has then been urged that the trial has been vitiated for non-examination of the complainant who, in this case, is Sri R. N. Sharma, Assistant Commissioner, of Labour and Conciliation Officer. It is emphasised that there is a clear breach of the provisions of Section 200, Criminal Procedure Code. Section 200, Criminal Procedure Code, lays down :

"A Magistrate taking cognizance of an offence on complaint shall at once examine the complainant and the witnesses present, if any, upon oath and the substance of the examination shall be reduced to writing and shall be signed by the complainant and the witnesses, and also by the Magistrate."

It is necessary in this connection to state the law how offences under the Industrial Disputes Act are taken cognizance of. Section 34 of that Act states as follows :

"34 (1) No Court shall take cognizance of any offence punishable under this Act or of the abetment of any such offence save on complaint made by or under the authority of the appropriate Government."

(2) x x x x x"

The Industrial Disputes Act, therefore, makes the filing of a complaint necessary before an offence under that Act may be taken cognizance of by a Court. One, therefore, has, necessarily, to be a complainant and file a petition of complaint before a competent Court. Section 200, Criminal Procedure Code, imposes on the Magistrate the duty of examining the complainant upon oath, but that is subject to the proviso (aa) which is in these terms :

"(aa) when the complaint is made in writing nothing herein contained shall be deemed to require the examination of a complainant in any case in which the complaint has been made by a Court or by a public servant acting or purporting to act in the discharge of his official duties."

If it can be shown that P.W. 12 in this case was a public servant and was acting or purporting to act in the discharge of his official duties, then, as the complaint (exhibit 16) is in writing, there would be no illegality if he was not examined upon oath. P. W. 12 stated that he was the Assistant Commissioner of Labour and Conciliation Officer at the time of the occurrence. He had proved the Government sanction (exhibit 15) authorizing him to file the complaint with which we are concerned. He has also proved the signatures of the Under Secretary to the Government. There has been no cross-examination on these facts, and therefore, it would be idle to pursue the matter further and to hold that his examination was required according to law under Section 200, Criminal Procedure Code, when, according to Section 11, sub-section (6) of the Industrial Disputes Act, every conciliation officer shall be deemed to be a public servant within the meaning of Section 21 of the Indian Penal Code. The position, therefore, is this. P.W. 12 was at the relevant period the Assistant Commissioner of Labour and Conciliation Officer. He was a public servant by virtue of Section 11 (6) of the Industrial Disputes Act. If he was not acting or purporting to act in the discharge of his official duties, it is extremely difficult to imagine in what capacity he had filed the complaint. It is absurd to hold for a moment that he filed the complaint as a creature of the Company or on his own behalf in a spirit of revenge for the display of unruly conduct in his presence at one time by some members of the Union. The complaint (exhibit 16) and the connected Government notification of sanction (exhibit 15) show that Government of Bihar had authorised Sri Ram Nath Sharma, Assistant Commissioner of Labour and Conciliation Officer of Patna, to file a complaint before the Court of the Sub-divisional Magistrate. Sadr Patna. In my opinion, therefore, the argument advanced on behalf of the respondents has no substance.

19. Assuming there had been some defect in the procedural law for starting the criminal case against the respondents, it has to be judged whether such a defect amounts to an illegality or a mere irregularity curable under Section 537 of the Criminal Procedure Code. Section 537 says that any error, omission or irregularity in the complaint is not sufficient for reversing or altering any finding, sentence or order passed by a Court of competent jurisdiction unless such error, omission or irregularity held in fact occasioned a failure of justice. This particular case has nothing to do with reversing or altering the finding or order of a Court below on the ground of irregularity. It is only a side-issue raised on behalf of the respondents to oppose this appeal by the State. In any case, on the assumption of any supposed defect, it has to be judged in the light of the provisions of Section 537, Criminal Procedure Code, whether such a defect amounted to an illegality or a mere irregularity. The respondents did not rest on this plank in the Court below to overthrow the prosecution. Nothing has been shown by the respondents as to how they could be prejudiced for non-examination of P.W. 12 under Section 200, Criminal Procedure Code. The underlying principle for the examination of the complainant at the time of filing a complaint is to ascertain whether the complaint established a prima facie case; that is, whether the facts disclosed in the petition of complaint called for investigation by a Criminal Court. It is to help the Court concerned to find out whether there were materials sufficient for the purpose of summoning the accused or for an enquiry into the grievances made by the complainant. It may be sometimes that the petition of complaint does not reveal all the necessary facts and the Court feels it necessary to examine the complainant to get other necessary facts in order to find out whether, indeed, a crime has been committed. Although the Legislature stresses the necessity of the examination of the complainant under Section 200, Criminal Procedure Code, it also provides the exemption of such procedure in certain cases when the complaint is filed by a Court or a public servant acting or purporting to act in the discharge of his official duties. It cannot be gainsaid that, when a

complaint is made by a Court or by such a public servant, efforts are made on their behalf to lay before the Magistrate all that he would require to find. A careful and thorough statement of an alleged crime and the main part played by the wrong-doer in it does not, usually, occur in the case of private complaints, where the complainant, not un-often, is actuated by motives other than a calm and dispassionate expectation of the punishment of the guilty. It has been held in a Special Bench decision of this Court in the case of *Bharat Kishore Lal Singh Deo v. Judhistir Modak*<sup>3</sup>, that the omission to examine the complainant on oath is not an illegality, but a mere irregularity. This argument on behalf of the respondents, accordingly, fails. It may be added in this connection that all that could be wanted for the Court to know whether there was a prima facie case for the prosecution was incorporated in the petition of complaint (exhibit 16) and the Government order sanctioning prosecution of the respondents (exhibit 15).

20. Yet, another argument has been trotted out on behalf of the respondents, and it has been stressed that this appeal cannot succeed because the case should have been dismissed long ago and the respondents acquitted for the non-appearance of the complainant on several dates. The order-sheet dated the 14th of March, 1953, shows that the complainant (P.W. 12) was present in Court and on that date only one prosecution witness was examined. On the 9th of April, 1953, the complainant was absent for about 45 minutes after the case was called out. The learned Magistrate deplored this absence and adjourned the case to the 24th April, 1953, with the observation that the Court would be compelled to award heavy cost to the accused persons. It appears, however, that later, on the same day, the complainant came to Court, and there is a note in the order-sheet that he was present. On the 24th April, 1953, the complainant was absent and a petition was filed by the prosecution that he would not be available on that date as he had gone out of Patna. After some comments, the learned Magistrate adjourned the case to the 8th of May, 1953. It appears, therefore that the complainant was absent on the 9th of April, 1953, when the case was called out, but, later on, on the same day, he came to Court and was marked present. He was absent on the 24th April, 1953, but on that date a petition was filed along with a letter from the complainant that he had gone out of Patna and, therefore, would not be available. The question now is whether the Court was bound to dismiss the case and acquit the accused under Section 247, Criminal Procedure Code, on the 9th April, 1953, when the complainant was absent during the period of 45 minutes, and again for his absence on the 24th April, 1953. Section 247, Criminal Procedure Code, is in the following words:

"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."

In the present matter under consideration, the personal attendance of the complainant had not been dispensed with because he appeared to be an important witness and his statement on oath was required in Court to prove the case of the prosecution. It has to be decided, therefore,

whether the Court acted improperly in adjourning the hearing of the case on two dates in spite of the absence of the complainant. It may be stated here that no ground on this score had ever been taken in the Court below at any time.

The respondents never moved the learned Magistrate nor any superior Court with a prayer that they should be deemed to have been acquitted under Section 247, Criminal Procedure Code, on account of the absence of the complainant. Rather, from the order-sheet it appears that both sides were taking adjournments to suit their individual convenience and the Court was obliging both of them. On the 23rd March, 1953, the Court adjourned the hearing on a request made on behalf of the defence that their lawyer was not present and the prosecution was examining a very material witness on that day. Again, on the 9th of May, 1953, on the request made on behalf of the defence, the cross-examination of P.W. 12 was adjourned as the lawyer engaged for the defence was out of Patna. On the 29th May, 1953, the defence witnesses could not come and *dasti* (dasti?) summons was prayed for and handed over to the accused. On account of the absence of some defence witnesses, the hearing was adjourned on the 19th June, 1953, the 24th June, 1953, and the 10th July, 1953, on the request made on behalf of the defence. It does not appear from the record, anywhere, that any of the accused suffered in the slightest degree for the non-appearance of the complainant in the first hour of the Court on the 9th April, 1953, and on the 24th April, 1953. The principle underlying Section 247, Criminal Procedure Code, is that in cases where summons has been issued on complaint there must be some one in charge of the case to look to the progress of the trial. Sometimes, unlike the State cases, where State officials are engaged for the prosecution, the Court's time is unnecessarily occupied in calling out the witnesses who may be loitering here and there in the Court premises. Unless, therefore, there was some person responsible for the examination of the prosecution witnesses and for other matters connected with it, the result will be that public time will be wasted. It is for this reason that the Legislature, in its wisdom, thought it fit to lay the responsibility upon the private complainant who was to be penalised in case he appeared to be negligent by his unjustified absence. The Legislature also gave a discretion to the Court to adjourn the hearing of a case if it appeared to it to be reasonable. The section does not provide that the reason should be recorded in writing. In this particular case the complainant did turn up after the first hour on the 9th of April, 1953, and did intimate to the Court on the 24th April, 1953, that his evidence would not be available as he was to go out of the station. The fact that the Court adjourned the hearing on these two dates shows that it thought it proper to do so. Indeed, I do not find anything in the order-sheet from which I will be justified in holding that it was improper, in the circumstances, for the Court to adjourn the hearing. Learned Advocate on behalf of the respondents has cited the decision in *Sudhir Kumar v. Emperor*<sup>4</sup>, where it was held that, when the complainant is absent, the only course open to the Magistrate is to ordinarily acquit the accused. It was observed, however, that it is also open to the Magistrate to adjourn the hearing of the case and not to proceed with the hearing. Whether the Magistrate had exercised his discretion in the proper manner or in an arbitrary fashion will depend upon the facts of each case and it cannot be argued that the Court, as a matter of routine, should acquit the accused if the complainant happens not to be present on a particular date or time of hearing. In *Pirag Lal v. Rustum Singh*<sup>5</sup>, Allsop J., observed as follows:

"I find from the provisions of Section 247, Criminal Procedure Code, that for some reason the legislature has laid it down that the personal presence of a complainant is necessary in order that a summons case should proceed ..... In the case of anybody, except a public servant, the personal attendance of the complainant is

necessary. In the present case the complainant did not attend in person and, therefore, under the provisions of Section 247, Criminal Procedure Code, there were only two courses open to the Magistrate. The more ordinary course was to acquit the accused as he did. The exceptional course was, if he had any particular reason for doing so, to adjourn the hearing of the case to some other day. The learned Magistrate exercised his discretion not to grant an adjournment. It seems on the face of it that he was perfectly entitled to exercise his discretion in that way ..... In re, Jamnabai Meghji, 35 Cri LJ 1139: (AIR 1934 Bombay 130), a Division Bench of the Bombay High Court held that Section 247, Criminal Procedure Code, allows a discretion and that it is not contemplated that the order of acquittal should be a mere matter of routine and follow automatically upon the absence of the complainant. In my opinion also, all the surrounding facts and circumstances have to be taken into consideration prior to the dismissal of a case under Section 247, Criminal Procedure Code keeping in view, however, the normal course as laid down.

The order of dismissal is almost fatal for a complainant, and it must be exercised with caution. It does not mean, however, that the Court should encourage negligence or laches on the part of the complainant. The discretion should rest in the Court, alone, as to what course it should adopt when a complainant is found absent on a date of hearing. In this particular matter, as already indicated, nothing has been shown on behalf of the respondents to indicate that the Court acted arbitrarily in, the exercise of its discretion or that its order adjourning the hearing was manifestly unfair on the face of the record. This argument also, therefore, fails.

21. It has been urged that this Court should be very reluctant to interfere in case of an acquittal by a competent Magistrate as laid down in several Privy Council and Supreme Court decisions. It has repeatedly been held, and it is not necessary to refer to all the decisions on this subject, that an acquittal no doubt is a valuable and substantial right which accrues in favour of the accused and that, except for strong reasons, there should be no interference. In *Sheo Swarup v. Emperor*<sup>6</sup> their Lordships of the Judicial Committee laid down certain principles by which the High Court should be guided in considering such matters. It was observed that the High Court should and will always give proper weight and consideration to the views of the trial Judge as to the credibility of the witnesses; the presumption of innocence in favour of the accused, a presumption which is not weakened by the fact that he has been acquitted at his trial; the right of the accused to the benefit of the doubt; and the slowness of an appellate Court in disturbing a finding of fact arrived at by a judge who had the advantage of seeing the witnesses. Judging the present case in the light of the principles laid down in this decision, I find there is no other possible course but to interfere with the order of acquittal. There was total absence of any justification for rejecting the evidence of P. W. 3 and to discard the registers which were proved by him. Indeed, he gave no reasons at all, while coming to his conclusions, as to why the testimony of this witness and the registers that he proved should be discarded. On other matters, he clearly erred in law which, by itself, make it necessary to interfere with his order.

22. It was faintly argued that the State Government did not apply its mind to the facts of this case before ordering sanction of the prosecution of the respondents. This argument has got no substance. It was made clear in the order of sanction (Exhibit 15) that the accused mentioned

therein had committed offences punishable under the Industrial Disputes Act for commencing, continuing or otherwise acting in furtherance of strike on the 29th of November, 1952, in Patna, which strike was illegal under the said Act. I fail to understand what more was needed to be inserted in this order to judge whether the Government had applied its mind to the facts of this case. It was aware of the strike staged on the 29th of November, 1952. It also considered the question and found that the strike was illegal. In my opinion, therefore, this part of the argument has no merit.

23. The result is that the appeal partly succeeds as against respondents Abdul Jabbar, Kusheshwar, Sakaldeo, Paltu and Samoo. They are fined Rs. 15/- each, in default, to undergo simple imprisonment for one week. As regards the other respondents, I am not in a position to interfere with the order of acquittal. The appeal with respect to them, therefore, fails and is dismissed.

**Misra, J.**

23. I agree to the order proposed.

Order accordingly.

Cases Referred.

<sup>1</sup>1953 SCR 219; (AIR 1953 SC 47)

<sup>2</sup>54 Cal WN 84; (AIR 1950 Cal 116)

<sup>3</sup> ILR 9 Fat 707; (AIR 1929 Pat 473)

<sup>4</sup> AIR 1942 Pat 46

<sup>5</sup>37 Cri LJ 1028; ( AIR 1936 All 658)

<sup>6</sup>61 Ind App 398 : (AIR 1934 PC 227)