

stated just above. In the circumstances of the case there is no order as to costs.

Gurdip Singh  
v.  
The State of  
Punjab

BHANDARI, C. J.—I agree.

Mehar Singh, J.  
Bhandari, C. J.

K. S. K.

APPELLATE CRIMINAL

Before G. D. Khosla and Tek Chand, JJ.

THE STATE,—Appellant.

versus

KULDIP SINGH AND OTHERS,—Respondents.

Criminal Appeal No. 699 of 1958.

*Administration of Evacuee Property Act (XXXI of 1950)—Section 38—Requirements of—Code of Criminal Procedure (Act V of 1898)—Section 403—Order of acquittal passed on the ground that the sanction of the Deputy Commissioner was not on the record—Whether bars second prosecution when it is found that the sanction had in fact been accorded before the first prosecution was started.*

1959  
July, 15th

*Held*, that Section 38 of the Administration of Evacuee Property Act, 1950, merely requires that the Government must give sanction before a prosecution can be started. It does not even say that the sanction must be in writing and it certainly does not say that the piece of paper upon which the sanction is recorded must be placed before the Court or placed on the record of the case to which it relates. That being so, it is the giving of the sanction which gives the power to the Court to hear the case. In this case sanction was given on 12th June, 1957. The Magistrate, therefore, had jurisdiction to hear the case. In this view of the matter the Magistrate could pass an order of acquittal or of conviction. He passed an order of acquittal and that order stands because it has not been set aside. It is wholly immaterial upon what grounds the order of acquittal was based. Section 403 of the Criminal Procedure Code does not say that the order of acquittal must be made on merits before it operates as a bar to a

second prosecution. Even if the order of acquittal is made on a technical ground, as long as the order stands, it will prevent further prosecution of the accused person.

*Emperor v. Pritam Singh* (1), followed.

*Appeal from the Order of the Court of Shri Jawala Nath Verma, Magistrate, First Class, Kapurthala, dated the 23rd August, 1958, acquitting the respondents.*

NARINDER SINGH, for Appellant.

K. S. KAWATRA, for Respondent.

#### JUDGMENT

G. D. Khosla,  
J.

G. D. KHOSLA, J.—The respondents, five in number, were tried upon a charge under section 32/36 of the Administration of Evacuee Property Act and acquitted on the ground that a previous order of acquittal stood in the way of a conviction upon a second prosecution.

The facts briefly are that the five respondents who are officials of the Custodian's Department were suspected of having "manoeuvred" a wrongfull allotment in the name of one Ladha Mal who had been allotted land in a certain village. A report was made and the case was registered on 24th July, 1956. Sanction by the Deputy Commissioner, Kapurthala, for the prosecution as required by section 38 of the Administration of Evacuee Property Act was given on the 12th of June, 1957. The challan was put into Court on 25th February, 1958. After a number of witnesses had been examined, the representative of the State thought that no sanction as required by section 38 was in existence. He, therefore, made a prayer that the case may be dismissed on this ground. The trial Magistrate accordingly made an order on

---

(1) A.I.R. 1948 Cal. 128

2nd June, 1958, of which the concluding portion is as follows:—

The State  
v.  
Kuldip Singh and  
others

—————  
G. D. Khosla,  
J.

“As the prosecution withdraws its case no further proceedings need be taken in this case which is filed and the accused are acquitted of the charge.”

The accused were, therefore, acquitted on the ground that in the absence of a valid sanction under section 38 of Administration the Court had no jurisdiction to hear the case against them. It transpired later that this was due to an entire misconception on the part of the representative of the State. When proceedings were started a second time, it was realised that the Deputy Commissioner, Kapurthala, had given his sanction on 12th June, 1957, i.e., some months before the case was put in to Court. The accused raised the plea that they had been validly acquitted upon the previous occasion because the sanction was in existence and the Court had jurisdiction to pass an order of conviction or of acquittal. Whether the order of acquittal was based upon a misconception in the mind of the prosecuting agency, the order of acquittal was valid because the sanction of the Deputy Commissioner vested the Court with jurisdiction to pass an order of acquittal. The learned trial Magistrate followed the decision of a Division Bench of the Calcutta High Court in *Emperor v. Pritam Singh* (1).

Against this order of acquittal the State has brought an appeal to this Court and it has been urged on behalf of the State that the order is erroneous because the Magistrate did not, in fact, have jurisdiction to pass an order of acquittal; he had no jurisdiction because the sanction of the Deputy Commissioner was not on record. The

(1) A.I.R. 1948 Cal, 128

The State  
v.  
Kuldip Singh and  
others

G. D. Khosla,  
J.

learned counsel for the State has sought to distinguish the placing of the sanction on record and the actual giving of the sanction. He contends that the actual giving of the sanction does not vest the Court with jurisdiction but it is the filing of the sanction in Court and placing it on the record of the case which gives the power to the Court to hear the case.

I cannot accept this argument. Section 38 merely requires that the Government must give sanction before a prosecution can be started. It does not even say that the sanction must be in writing and it certainly does not say that the piece of paper upon which the sanction is recorded must be placed before the Court or placed on the record of the case to which it relates. That being so, it is the giving of the sanction which gives the power to the Court to hear the case. In this case sanction was given on 12th June, 1957. The Magistrate, therefore, had jurisdiction to hear the case. In this view of the matter the Magistrate could pass an order of acquittal or of conviction. He passed an order of acquittal and that order stands because it has not been set aside. It is wholly immaterial upon what grounds the order of acquittal was based. Section 403 of the Criminal Procedure Code does not say that the order of acquittal must be made on merits before it operates as a bar to a second prosecution. Even if the order of acquittal is made on a technical ground, as long as the order stands, it will prevent further prosecution of the accused person.

The Calcutta ruling to which a reference has been made is on all fours with the present case, and with great respect to the learned Judges of the Calcutta High Court I find myself in entire agreement with the view expressed by them. I,

therefore, hold that there is no force in this appeal, that the order of acquittal made on 2nd June, 1958, stands and section 403 of the Criminal Procedure Code is a bar to a second prosecution of the respondents. This appeal must, therefore, fail and I would dismiss it.

The State  
v.  
Kuldip Singh and  
others  
G. D. Khosla,  
J.

TEK CHAND, J.—I agree.

Tek Chand, J.

B. R. T.

APPELLATE CIVIL

Before Shamsher Bahadur, J.

SHRIMATI KAKO,—Appellant.

versus

AJIT SINGH,—Respondent.

First Appeal from Order No. 44 of 1957.

Hindu Marriage Act (XXV of 1955)—Section 10—Requirements of—Desertion—Meaning of—Payment of maintenance by husband to wife—Whether puts an end to desertion.

1959  
July, 16th

Held, that to obtain a decree for judicial separation on ground of desertion it has to be shown that either party to a marriage has deserted the petitioner for a continuous period of not less than two years without reasonable cause and without or against his consent immediately preceding the presentation of the petition. Though no attempt has been made to define desertion, it is in essence the "intentional permanent forsaking and abandonment of one spouse by the other without reasonable cause. It is a total repudiation of the obligations of marriage. Desertion is not the withdrawal from a place, but from a state of things, for, what the law seeks to enforce is the recognition and discharge of the common obligations of the married state." The gist of the matrimonial offence of desertion consists in the intention of the deserting spouse (*animus deserendi*) never to return to the marital home while there