

PART F.-DISMISSAL OF CASES IN DEFAULT.

Some magistrates are inclined to dismiss cases in default hastily.

Inclination to dismiss cases in default.

2. Before a case is dismissed by reason of the absence of complainant, the magistrates should carefully consider-

Reasons for dismissal in default should be recorded.

- (a) whether such an order is legal; and
- (b) whether it is justified by the circumstances.

In view of the proviso added to section 247 of the Code by Act 26 of 1955 even in summons cases the magistrate can proceed with the case on complainant's failure to attend when he considers that complainant's personal attendance is not necessary.

Reasons should always be recorded where a case is dismissed in default.

3. In applications for revision of orders dismissing complaints or cases instituted on complaint, by reason of the absence of the complainant, it is frequently urged-

Instruction to be observed in redissmissal of complaints, etc., by reason of the absence of the complainant.

- (a) that the complainant was not called;
- (b) that the case was dismissed very early in the day; or
- (c) that the magistrates being on tour, the complainant had no, or insufficient, notice of the place of sitting.

(ii) The magistrates' records often furnish no definite information on any of these points. The following instructions are accordingly issued for guidance to subordinate Courts: -

- (a) Magistrate should not dismiss complaints or cases instituted on complaint without giving complainants full opportunities for appearance. Ordinarily, if a complainant is absent

when his case is first called on, his case should be called on again later, and the time of dismissal should always be noted on the record.

- (b) When the magistrate is on tour, complaints or cases instituted on complaint should not be dismissed unless the complainant has had due notice of the place of hearing.
- (c) In carrying out these instructions magistrates should bear in mind that if a summons-case in which a summons has been issued, is dismissed on account of the absence of the complainant the accused must be acquitted, unless the magistrate decides to proceed with the case under the proviso recently added to section 247 of the Code. A warrant-case, in which proceedings have been instituted on complaint, can only be dismissed in the absence of the complainant, if the offence is one that can lawfully be compounded, or is not a cognizable offence. In the latter case the magistrate may, in his discretion, discharge the accused at any time before a charge has been framed, under section 259 of the Code of Criminal Procedure. If the offence is cognizable or is one that cannot lawfully be compounded, the magistrate is bound to proceed with the case and decide it on its merits.
- (d) Section 247 of the Code of Criminal Procedure does not apply when the entire evidence in a case has been concluded and the case has been adjourned only for judgment without the attendance of the complainant having been specially directed.