

**(1923) 09 AHC CK 0005**

**Allahabad High Court**

**Case No:** None

Ram Govind Singh

APPELLANT

Vs

Lallu Singh and Others

RESPONDENT

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**Date of Decision:** Sept. 14, 1923

**Acts Referred:**

- Criminal Procedure Code, 1898 (CrPC) - Section 495

**Citation:** AIR 1924 All 203 : (1924) ILR (All) 88

**Hon'ble Judges:** Sulaiman, J

**Bench:** Single Bench

**Final Decision:** Disposed Of

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### **Judgement**

Sulaiman, J.

This reference must be accepted. A private complaint was filed by Ram Gobind Singh against Lallu Singh and others and the case was being tried by the Sub-Divisional Magistrate concerned. The record shows that a legal practitioner engaged by the complainant was permitted by the trying Magistrate to conduct the prosecution case. In his explanation the District Magistrate has admitted that "it is true that the prosecuting inspector did not actually take part in the conduct of this case." After the evidence of the complainant had been recorded, a charge was framed and it was after that stage that the accused persons made an application to the District Magistrate requesting that the case be with-drawn on certain terms. The file was sent for. When sending up the file the trying Magistrate addressed a note to the District Magistrate setting forth the facts of the case and winding up with the remark: "I, therefore, would strongly recommend the application for your kind consideration because I do not believe that the accused committed the offence with intent to defraud." On reading the report of the trying Magistrate and perusing the file, the District Magistrate seems to have been of opinion that the case was not one which should be dragged to its bitter end. He accepted the apology of the accused persons as well as the offer of the sum of Rs. 4,500 for a charitable purpose.



He ordered that " the P. I. (that is the prosecuting inspector) will withdraw the case. Out of Rs. 4,500 Rs. 200 will be paid to the complainant to defray his expenses and to compensate him." This order reached the trying Magistrate's court before whom a further application was presented by the Court Inspector. On that application the trying Magistrate passed this order: "The case has been withdrawn by the District Magistrate. The accused should be acquitted accordingly."

2. These are the facts about which there can be no dispute whatsoever. The question for consideration is whether the order passed by the trying Magistrate was legal and whether, in any case, it ought to be set aside.

3. On behalf of the accused persons it has been contended that I must assume that the District Magistrate in sending for the file had actually recalled the case or withdrawn it from the court of the trying Magistrate and was himself seised of it and was inquiring into it or trying it and that it was in the course of such an inquiry or trial that he appointed the Court Inspector as a person to conduct the prosecution of this case within the meaning of Section 495, Criminal Procedure Code, and that, therefore, the latter was duly authorized to withdraw the case. On the facts narrated by me such assumptions would be altogether unjustified.

4. There can be no doubt that Section 492, Clause (1) of the Code of Criminal Procedure cannot apply. Under that Section an officer appointed by the Governor General in Council or the Local Government to be called a public prosecutor would be Such an officer. Court Inspectors of districts are not called by the Local Government as public prosecutors, and I have no doubt that they have not been appointed as such. No notification suggesting anything to the contrary has been brought to my notice.

5. It is also obvious that Section 492, Clause (2) can have no application. The Code which was in force when this order was passed was the old Code, and as it then stood, Clause (2) could only apply to a case which had been committed for trial to the court of session. It could not apply to a case which was actually pending before a Sub-Divisional Magistrate.

6. The learned vakil for the accused has relied strongly on Section 495, Clause (1), but I am of opinion that that also does not apply to the facts of this case. It cannot be disputed that after the complaint had been filed, the vakil engaged by the complainant was the person who had been permitted to conduct the prosecution case, and it is not disputed that it was he who was engaged by him and who had been prosecuting the case. The Court Inspector, who never went anywhere near the court when this case was being tried and took no part in the trial and as regards whom there is no order on the record to conduct the prosecution, is, in my opinion, not the person who, u/s 495 of the Code of Criminal Procedure, would have the powers of a public prosecutor. There is nothing on the record to show that the complainant or his vakils were at all consulted before the withdrawal was decided



upon. As the learned Sessions Judge has remarked, it does seem as if it was done over the heads of those persons.

7. The question, therefore, is whether under these circumstances the Court Inspector had authority, even with the consent of the trying Magistrate, to withdraw the case or not, I am of opinion that he had no such power. He was not the Public Prosecutor appointed by the Local Government and called as such, nor was he in this case the person who was permitted to conduct the prosecution. Even assuming, however, that the Court Inspector with the consent of the trying Magistrate had power to withdraw this case and even without consulting the complainant and his vakil, I am of opinion that this is a case in which the order acquitting the accused persons must be set aside.

8. When a private complaint is filed and then the complainant is given permission to conduct the prosecution and be responsible for its conclusion, it does seem to me highly improper" that after he has closed his evidence and the charge has been framed, the prosecution should suddenly drop without even consulting him. If there was no case made out against the accused at all, the accused were entitled to have a clear acquittal and not an acquittal on the payment of a price. The learned vakil who appeared for the accused had strongly pressed that the opinion expressed by the trying Magistrate in his note to the District Magistrate shows that he was convinced that the conviction would not follow. Whether this is so or not, I refrain from expressing an opinion. The opinion contained in that private note may or may not be that, but if it is a fact that the trying Magistrate was satisfied that there was no case against the accused, he should have acquitted them at once.

9. In view of the observations made by me above, I think it is necessary in the ends of justice that the order of acquittal should be set aside and the case sent back for disposal according to law. The case will, of course, proceed from the stage which it had reached before the order in question was passed,