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**(1975) 09 AHC CK 0018**

**Allahabad High Court**

**Case No:** None

Mahabir Prasad and Another

APPELLANT

Vs

State and Another

RESPONDENT

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**Date of Decision:** Sept. 22, 1975

**Acts Referred:**

- Penal Code, 1860 (IPC) - Section 441, 447

**Citation:** (1975) AWC 576 : (1976) CriLJ 245

**Hon'ble Judges:** Hari Swarup, J

**Bench:** Single Bench

**Final Decision:** Dismissed

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### **Judgement**

@JUDGMENTTAG-ORDER

Hari Swarup, J.

These three references have been made with the recommendation that the conviction of the applicants in each of the three references u/s 447, I. P.C. and the Sentence of fine of Rs. 50/- awarded for the offence be quashed.

2. Three complaints had been filed by the Assistant Engineer P.W. D. on the allegation that the accused in each case was in unauthorised possession of the proper in dispute and in spite of the notice served upon him, had not withdrawn from the property. The learned Magistrate without recording any finding about service of The notice contemplated by Section 441, I. P.C. convicted the accused on the finding that the land belonged to the P.W. D. and had been encroached upon by the accused.

3. The learned III Additional District and Sessions Judge ^m examining the evidence came to the conclusion that the notice was not proved to have been served on the accused- Learned Government Advocate has referred to the evidence in the case and has pointed out that there is evidence to the effect that the notice had been

sent. Sending of notice is, however, not sufficient Section 441, I. P.C. provides for a civil trespass getting converted into criminal trespass on the service of the notice on the trespasser to vacate the property. There is no evidence to show that the notice issued under S, 441, I. P. C by the complainant had been served on the accused. Unless the notice had been served the civil trespass could not get converted into a criminal transposes. A fortiori the accused could not be convicted u/s 447, I. P.C.

4. In the result the references are accepted, the order of the learned Magistrate convicting the accused u/s 447, I. P.C. and sentencing him to pay fine of Rs. 50/- each are quashed.