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**(1948) 08 AHC CK 0018**

**Allahabad High Court (Lucknow Bench)**

**Case No:** None

Ajodhiya Prasad and Others

APPELLANT

Vs

Sitaram

RESPONDENT

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**Date of Decision:** Aug. 20, 1948

**Acts Referred:**

- Criminal Procedure Code, 1898 (CrPC) - Section 107

**Citation:** AIR 1949 All 350 : (1949) CriLJ 566

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

**Bench:** Single Bench

**Final Decision:** Allowed

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### **Judgement**

@JUDGMENTTAG-ORDER

Chandiramani, J.

This is an application of Ajodhiya Prasad and two others against an order of the learned Sessions Judge of Unao.

2. It would appear that one Sita Earn made an application on 26th August 1947, to the Court concerned against 18 persons for action u/s 107, Criminal P. O. Among the eighteen were included Ajodhiya Prasad, Mahabir and Mahab&l Singh applicants. On 6th September 1947, the Magistrate concerned ordered that persons nos, 1 to 10 only should be summoned and process-fee should be deposited accordingly. Sita Bam somehow, while depositing the fees for 10 persons, asked that summonses be issued to ten persons including the present applicants Mahabir, Mahabal Singh and Ajodhiya Prasad. When these applicants appeared before the Court they protested and pointed out to the Court below that their names had deliberately been omitted by the Court and it was directed that the summonses should not be issued to them. On 27th November, the Magistrate himself accepted these contentions of the applicants and directed that the summonses should issue against those of the persons, four in number, in the list who had not yet been summoned in spite of his

orders. It seems that the Magistrate was thereafter transferred and, when his successor came, an application was given by Sita Kam on 17th December stating that he apprehended a breach of the peace from ten persons, including the three applicants, and the learned Magistrate directed proceedings to continue against the applicants. The applicants being dissatisfied went up to the learned Sessions Judge, who refused to interfere, holding that in ease no case was made out for apprehension of breach of the peace from the applicants the Court concerned would-make suitable orders.

3. It has been urged in this Court that the second Magistrate had no authority whatever to set aside in fact the order of discharge passed by his predecessor the more so as no new or fresh material had been brought on the record to show that there was in fact any apprehension of breach of the peace from the applicants have heard the learned Counsel and am satisfied that the application must be allowed.

4. It is clear that u/s 107, Criminal P. C. full discretion has been given to the Magistrate to order in which cases a notice shall issue under 3.112, Criminal P. C. In this case the first Magistrate, for whatever reasons he considered proper, was of the opinion that no action was required against the three present applicants and he made this position abundantly clear by his subsequent order dated 27th November 1947. If this order was unjustified or contrary to law the remedy lay in approaching the proper Court for making a reference to this Court. The application made by Sita Ram could not amount to a complaint nor were the persons proceeded against "accused" persons in the sense in which the term "accused" is used in the Code of Criminal Procedure. The second Magistrate exercised concurrent jurisdiction with the first Magistrate and unless there was really fresh material before him, he could not merely set aside the order of his predecessor in the way he has done and revive the proceeding.

5. Accordingly, I allow this application and direct that the three applicants shall be discharged from the proceedings u/s 107, Criminal P.C. If Sita Bam feels that these persons were improperly discharged by the first Magistrate it will be open to him to seek such remedy as he today be advised to take.