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**(1936) 01 AHC CK 0012**

**Allahabad High Court**

**Case No:** None

Abdul Jalil Khan

APPELLANT

Vs

Emperor

RESPONDENT

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**Date of Decision:** Jan. 15, 1936

**Acts Referred:**

- Criminal Procedure Code, 1898 (CrPC) - Section 195

**Citation:** AIR 1936 All 354

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

**Bench:** Division Bench

**Final Decision:** Dismissed

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### **Judgement**

@JUDGMENTTAG-ORDER

Niamatullah, J.

This is an application by one Abdul Jalil Khan for revision of the order, dated 6th September 1935, passed by the District Magistrate, Fatehpur, making a complaint of an offence u/s 172, Criminal P.C., against the applicant. The circumstances giving rise to the application are as follows:

2. On 16th August 1935, Mt. Ganga Dei, a Hindu female, went to the police station at Fatehpur to make a report. A number of Hindus and Mahomedans were interested in the proceeding which Mt. Ganga Dei was expected to take. Hanuman Teli, whose relationship with the woman does not appear from the record, reported that the woman had been abducted by certain persons. The woman expressed her willingness to go with Abdul Jalil Khan and declared that she had embraced Islam. The police allowed the woman to go with Abdul Jalil Khan, who was, however, called upon to give an undertaking to produce her before the Magistrate next day (17th August 1935). The woman was not, however, produced on that day by Abdul Jalil, and one Nandan made an application alleging that he was the husband of the woman and that she was being unlawfully detained by Abdul Jalil. He prayed for an

order u/s 552, Criminal P.C., being passed. Nandan was examined on oath, and the learned District Magistrate passed an order in these terms:

Let an order be issued u/s 552, Criminal P.C., to the police to produce the woman before me in Court on Monday next (19th August 1935) together with the police report. Inform parties also.

3. The police could not produce the woman on 19th August 1935 and reported that Abdul Jalil Khan had disappeared with the woman. The case was adjourned to 26th August 1935, but no appearance was made either by Abdul Jalil or the woman. Abdul Jalil however, appeared before the District Magistrate on 6th September 1935, and stated that he had brought the woman on 17th August 1935, to the Court compound, but she slipped out of his custody and could not be traced. The District Magistrate did not believe this story and expressed the opinion that Abdul Jalil was guilty of an offence u/s 172, I.P.C. Accordingly he made a complaint u/s 195, Criminal P.C., for the prosecution of Abdul Jalil u/s 172, I.P.C. Abdul Jalil has applied to this Court in revision challenging the legality of the District Magistrate's action. It is argued that on the facts stated in the District Magistrate's order, dated 6th September 1935, no offence u/s 172, I.P.C., is made out. That section provides:

Whoever absconds in order to avoid being served with a summons, notice or order proceeding from any public servant, legally competent, as such public servant to issue such summons, notice or order shall be punished....

4. The District Magistrate has noted in his order that:

Abdul Jalil Khan absconded in order to avoid being served with my orders relating to the alleged abduction or unlawful detention of the woman.

5. There can be no doubt that Section 172 can apply only if a summons, notice or order is to be served on the accused, who absconded with a view to evading the service of such summons, notice or order. The record does not afford the slightest indication of any summons, notice or order being issued for service on the applicant. The order which the District Magistrate could pass u/s 552, Criminal P.C., was for the immediate restoration of the woman unlawfully detained to her liberty, or if she is a female child below 16 years, to her husband, parents, guardian or other person having the lawful charge of such child. It is not suggested that Mt. Ganga Dei is below 16. The only order which the District Magistrate could, therefore, pass was one directing the restoration of the woman to her liberty. It seems to me that the order of the District Magistrate directing the police to produce the woman before him is not one u/s 552, Criminal P.C., at all. It is needless to consider whether the District Magistrate could pass such an order under some other provision of law. It is, however, clear that the substance of his order should have been to the effects already stated. There is nothing in Section 552, Criminal P.C., which requires service of the order on any person. The order is one capable of execution, and the section lays down that the Magistrate "may compel compliance with such order using such

force as may be necessary." Once an order u/s 552, Criminal P.C., has been passed, it is open to the Magistrate to use all lawful means to have the woman restored to her Liberty.

6. It is conceivable that, for that end, he may legally issue an appropriate direction to some other person in whose custody the woman may be. Such a direction was not given to Abdul Jalil Khan in the present case, nor was it intended by the District Magistrate that any order should be served upon him for compliance with its terms. The last portion of the order, dated 17th August 1935, directing information being given to the parties that further proceedings in the case would be taken on 19th August 1935, does not appear to have been carried out. The record does not show that any formal summons or notice was drawn up and issued for service on Abdul Jalil Khan. In the first place, it is doubtful, to say the least of it, that an order that information of the date fixed for a case be given to a party is such an order as is contemplated by Section 172, I.P.C. In the second place, this section is not applicable, unless summons, notice or order which was to be served on the accused was, in fact, in existence and capable of being served. For these reasons I do not think that the last portion of the District Magistrate's order, dated 17th August 1935, in which he directed his office to inform the parties of the date fixed for the further hearing of the case can be considered to be an order which was to be served and which the accused evaded by absconding. For the reasons already stated I am clearly of opinion that the order of the District Magistrate dated 17th August 1935 is not one which can be considered to be, in substance or form, an order under Rule 552, Criminal P.C.; and even if it is, he did not in that connexion issue any summons, notice or order for service on the applicant and no attempt was or could be made to serve on him such summons, notice or order. Section 172, I.P.C., cannot, therefore, apply.

7. As already stated, the District Magistrate made a complaint u/s 195, (1) (a), Criminal P.C. It is not an order to which Section 476, Criminal P.C., can apply. Ordinarily this Court will not entertain a revision against what purports to be no more than a complaint. In the present case the District Magistrate made a complaint in relation to proceedings taken u/s 552, Criminal P.C., and the complaint is based on the assumption of facts which are matters of record and do not depend to any extent on oral evidence. If it is clear that those facts do not constitute any offence, the proceedings taken may be quashed to prevent further harassment of party. I have not been referred to any other section of the Penal Code which may be applicable to the facts apparent on the face of the record. The result is that this application is allowed and the criminal proceedings initiated by the District Magistrate's order, dated 6th September 1935, are quashed.