
(1990) 07 AHC CK 0031

Allahabad High Court

Case No: Criminal Revision No. 1095 of 1990

Laxmi Narain Agarwal
and Anr.

APPELLANT

Vs

State & Anr.

RESPONDENT

Date of Decision: July 30, 1990

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 205, 244, 245(2)

Hon'ble Judges: S.R.Bhargava, J

Final Decision: Disposed Of

Judgement

S. R. Bhargava, J.

This revision against summoning order, accompanied by application under Section 5 of the Limitation Act, has arisen from a case of private complaint under Sec. 480 I.P.C. Revisionist are residents of District Agra, complaint was filed against them in district Jhansi with allegations that on 28th April, 1983 revisionists contacted Firm M/s. Om Traders for purchasing gram. The said Om Traders asked the complainant to supply gram to the revisionists. On 29th April, 1988 complainant's Munim carried 40 bags of gram to Agra. Revisionists took the delivery of the gram and said that within a couple of days they would pay the price by draft. When the complainant's Munim protested, he was scolded and driven away. Thereafter the revisionists did not pay any money and swallowed Rs. 1,52,460.00 payable to the complainant by fraud. After evidence under Section 200 and 202 Cr.PC. Learned Magistrate summoned the revisionists. Warrants were issued. At this stage it cannot be said whether before issue of warrants provisions of Section 87 Cr.PC. were complied with. It is, however, alleged by the revisionists that revisionist No. 1 Laxmi Narayan was arrested at Agra and on being produced before the Magistrate he secured bail at Agra. Then he got the record inspected at Jhansi. Only then he became aware of the summoning order, he filed petition under Sec. 482 Cr.PC. for quashing of proceeding pending at Jhansi. Under the order of the Bench dealing with petitions under Section 482 Cr.PC. the petition has been converted into revision and is

now before this Court.

2. The two basis questions which have been raised on behalf of the revisionists are that the complaint is with respect to price of goods supplied at Agra and so (1) whether the complaint relating to purely of civil matter is at all maintainable, (2) whether for the cause of action which took place at Agra, Jhansi court could have jurisdiction. Both these questions can be conveniently decided by the Magistrate himself as preliminary questions. Revisionists can raise this question before the Magistrate concerned by moving application for discharge under Section 245 (2) Cr.PC. Magistrate should not overlook that application for discharge under Section 245(2) Cr.PC. can be moved at any stage and even before any evidence is recorded under Section 244 Cr.PC. This court does not intend to cause any harassment to the revisionists. At the same time this Court is not inclined to keep the case against the revisionists pending for indefinite period. If at this stage this court only admits the revision and stays the proceedings of the Magistrate, the case against the revisionists shall remain pending for indefinite period.

3. Considering all the circumstances of the case I finally dispose of the revision with direction that the revisionists shall be at liberty to appear before the Magistrate concerned through counsel. Their personal attendance should be deemed to have been exempted under Section 205 Cr. P.C. Revisionist shall be at liberty to move application for discharge under Section 245 (2) Cr. P.C. before the Magistrate concerned as observed above. In case the revisionists move such application the Magistrate shall dispose of the same within three months. Meanwhile nonbailable warrants of Laxmi Narayan Agarawal and Munna Lal Agrawal issued by Jhansi court shall not operate for a month.

4. A copy of this order be issued to the counsel of the revisionists on payment of usual charges within 48 hours.

Revision disposed of.