

**(2008) 09 AHC CK 0261**

**Allahabad High Court**

**Case No:** Criminal M.A. No. 24345 of 2008

Om Prakash and Another

APPELLANT

Vs

State of U.P. and Another

RESPONDENT

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**Date of Decision:** Sept. 18, 2008

**Acts Referred:**

- Criminal Law (Amendment) Act, 1932 - Section 7
- Criminal Procedure Code, 1973 (CrPC) - Section 482, 82
- Penal Code, 1860 (IPC) - Section 147, 148, 149, 308, 323

**Citation:** (2009) 1 ACR 525

**Hon'ble Judges:** Ravindra Singh, J

**Bench:** Single Bench

**Advocate:** Rakesh Kumar Singh Chauhan and Neelam Singh Chauhan, for the Appellant;  
A.G.A., for the Respondent

**Final Decision:** Disposed Of

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### **Judgement**

Ravindra Singh, J.

Heard Sri Prakash Kumar Singh Chauhan and Smt. Neelam Singh Chauhan, learned Counsel for the applicants, learned A.G.A. for the State of U.P. and perused the record.

2. This application has been filed with prayer to quash the proceedings of Criminal Case No. 398 of 1997 under Sections 147, 148, 149, 308, 427, 336, 323 and 504, I.P.C. and Section 7 of Criminal Law Amendment Act, 1932 pending in the Court of learned Special Chief Judicial Magistrate, Agra.

3. It is contended by learned Counsel for the applicants that in the present case the F.I.R. has been lodged against the applicants on 19.4.1993 in Case Crime No. 209 of 1993 under Sections 147, 148, 149, 308, 427, 336, 323 and 504, I.P.C. and Section 7 of Criminal Law Amendment Act, 1932 at P.S. New Agra. The matter was

investigated and the charge-sheet was submitted against the applicants on 5.5.1993 on which the learned Magistrate concerned has taken the cognizance, thereafter the matter was transferred to C.B.C.I.D. by the Government, the Investigating Officer of the C.B.C.I.D. moved an application before the Court concerned for obtaining the permission of further investigation, the same was allowed and the proceedings were stayed by learned Magistrate concerned on 14.7.1994. The proceedings were kept stayed by learned C.J.M., Agra for some period, the case was transferred to the Court of learned Special C.J.M., Agra where also the proceedings were kept stayed. Thereafter without any reason the learned Special C.J.M., Agra has issued the non-bailable warrant and process u/s 82, Cr. P.C., whereas no police report was submitted by the C.B.C.I.D. after completing the investigation. The learned Magistrate concerned has illegally issued the non-bailable warrant and process u/s 82, Cr. P.C., the same may be quashed.

4. In reply of the above contention, it is submitted by learned A.G.A. that in this case, on the charge-sheet submitted by the Investigating Officer, the learned Magistrate concerned has also taken the cognizance and summoned the applicants to face the trial, but the order of further investigation was passed by the Court, thereafter the Investigating Officer of the C.B.C.I.D. moved an application for obtaining the permission for further investigation u/s 173(8), Cr. P.C., the same was allowed, the case was handed over to the Investigating Officer and proceedings were stayed by learned Magistrate concerned. The order dated 14.7.1994, passed by the learned Magistrate concerned was illegal because after taking the cognizance the learned Magistrate concerned was not empowered to keep the proceedings in abeyance. Subsequent order passed by learned Magistrate concerned issuing the non-bailable warrants and process u/s 82, Cr. P.C. are having no illegality and there was no ground for quashing the proceedings.

5. Considering the submissions made by learned Counsel for the applicants, learned A.G.A. and from the perusal of the documents it appears that it is too old matter in which the charge-sheet was submitted on 5.5.1993 but the proceedings are still pending. The learned Magistrate concerned already taken the cognizance on the basis of charge-sheet submitted against the applicants. The State has directed for doing the further investigation to C.B.C.I.D. Thereafter the Investigating Officer of the C.B.C.I.D. moved an application before the learned Magistrate concerned for obtaining the permission of learned Magistrate concerned and handed over the case diary and stayed the proceedings. The learned Magistrate concerned who stayed the proceedings on 14.7.1994, committed a manifest error because it was not proper to stay the further proceeding after taking the cognizance. In case the learned Magistrate concerned has taken the cognizance on the basis of the police report, if it is transferred to some other investigating agency by the Government even after taking the permission from the Court concerned and the final report is submitted by subsequent investigation, it cannot affect the order of cognizance taken by the learned Magistrate concerned, it may be used for the purpose of the

contradiction etc., at the stage of the trial. The learned Magistrate concerned had illegally stayed the proceedings on the basis of the application filed by the Investigating Officer for obtaining the permission for further investigation. The order dated 14.7.1994 staying the further proceedings was kept in law. Subsequently the learned Magistrate concerned has rightly issued the non-bailable warrant and process u/s 82, Cr. P.C. There is no illegality in issuing the non-bailable warrant and process u/s 82, Cr. P.C., therefore, the prayer for quashing the same as well as the proceedings pending against the applicants in the abovementioned case is refused.

6. Considering the facts and circumstances of the case, it is directed that applicants shall appear before the Court concerned within one month from today, in case they apply for bail, the same shall be heard and disposed of expeditiously if possible on the same day. In case they do not appear or surrender before the Court concerned, the learned Magistrate concerned shall adopt the procedure prescribed for ensuring the presence of the accused persons under the Code of Criminal Procedure.

7. It is further directed that learned Magistrate concerned shall ensure the presence of the accused persons before the Court concerned or shall commit the case to the Court of Sessions expeditiously, after committal the proceedings of the sessions trial shall also be expedited without granting any unnecessary adjournment to either of the side because this case is pending for a period of more than last ten years.

8. Office is directed to communicate a copy of this order forthwith to learned Sessions Judge, Agra for ensuring the compliance of abovementioned directions.

9. With this direction, this application is finally disposed of.