

(1995) 12 AHC CK 0108

Allahabad High Court

Case No: Criminal M.W.P. No. 2088 of 1995

Chandra Veer Singh and Others

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision: Dec. 13, 1995

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 245
- Penal Code, 1860 (IPC) - Section 440

Citation: (1996) 20 ACR 115

Hon'ble Judges: S.N. Saxena, J

Bench: Single Bench

Advocate: Vimlesh Kumar Rai, for the Appellant;

Final Decision: Disposed Of

Judgement

S.N. Saxena, J.

Heard the learned Counsel for the Petitioners and also perused the record. The Petitioners numbering 16 have been summoned by the learned trial court on the basis of a complaint for facing trial u/s 440, I.P.C. It is said that they had made preparation with the help of which they could have caused hurt and even death if they were resisted in the achievement of their aim. They thereafter, had gone to the field of the complainant and caused mischief by spoiling his produce. The weapons which they were allegedly carrying with them were Lathi, Ballam and Garasa.

2. The Petitioners made a request by moving application dated 6.12.1994 before the learned trial court for recall of the summoning order which however, was dismissed on the ground that this prayer could not be considered unless evidence was recorded, including the cross-examination of the witnesses. The Petitioners preferred a revision application also against the summoning order which was decided by the learned 1st Addl. Sessions Judge, Azamgarh by order dated 30.10.1995 whereby it was dismissed and the concerned Magistrate was directed to

proceed with the case in accordance with law. Feeling aggrieved, this writ petition has been preferred by the Petitioners.

3. Learned Magistrate probably was not aware of the provisions of Section 245, Code of Criminal Procedure, 1973 Act II of 74 otherwise he would, instead of dismissing the application on the ground of maintainability, would have decided the same on its merits on the basis of the evidence which was there on the record. He thus, failed to exercise the jurisdiction which should have been exercised by him.

4. Learned Counsel for the Petitioners relied upon a decision of Hon"ble Supreme Court reported in [K.M. Mathew Vs. State of Kerala and another](#) , wherein it was held that even in absence of specific provisions, the learned Magistrate was bound to consider the request of the Petitioner and drop the proceedings if he was satisfied on reconsideration of the complaint that there was no offence for which accused could be tried as it was his judicial discretion and no specific provision was required to drop the proceeding or rescind the process. For the guidance of the learned Magistrate it would be proper to reproduce para 8 from the said decision:

It is open to the accused to plead before the Magistrate that the process against him ought not to have been issued. The Magistrate may drop the proceedings if is satisfied on reconsideration of the complaint that there is no offence for which the accused could be tried. It is his judicial discretion. No specific provision is required for the Magistrate to drop the proceedings or rescind the process. The order issuing the process is an interim order and not a judgment. It can be varied or recalled. The fact that the process has already been issued is no bar to drop the proceedings if the complaint on the very fact of it does not disclose any offence against the accused.

5. Learned Counsel for the Petitioners contended that this Court itself may appreciate evidence and if satisfied with the contention of the Petitioners, may grant relief by dropping the proceedings. It is difficult to agree with the learned Counsel for the Petitioners as the scope of the writ petition is very limited, even less than that of a Court of revision and, therefore, I do not find it proper to re-examine the evidence here. Under the circumstances of the case and with the consent of the learned Counsel for the Petitioners and the learned A.G.A. and also in accordance with the rules of the court, I propose to dispose of this writ petition with the following direction to the learned Magistrate after quashing the impugned order passed in criminal revision No. 79 of 1995 as contained in Annexure No. 11 to the writ petition.

6. The impugned order dated 30.10.1995 passed in Criminal Revision No. 79/95 as contained in Annexure No. 11 to the writ petition is quashed and the case is remanded to the court of the learned Magistrate for decision of the application dated 6.12.1994 of the Petitioners in accordance with law and the observations made in the body of this judgment expeditiously, preferably within one month from

the date of production of this order before him by the Petitioners, provided they co-operate with the learned Magistrate otherwise he may take his own time. The Petitioners are directed to produce a copy of this order before him within a period of two weeks from today. The petition is disposed of accordingly.