

**(1998) 07 AHC CK 0130**

**Allahabad High Court**

**Case No:** Criminal Miscellaneous (482) Application No. 2461 of 1998

Rajeshwar and Others

APPELLANT

Vs

State of U.P. and Another

RESPONDENT

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**Date of Decision:** July 20, 1998

**Acts Referred:**

- Criminal Procedure Code, 1973 (CrPC) - Section 161, 173(2), 173(8), 190(1), 195
- Penal Code, 1860 (IPC) - Section 420, 467, 468, 471

**Citation:** (1998) 2 ACR 1233

**Hon'ble Judges:** S.K. Phaujdar, J

**Bench:** Single Bench

**Advocate:** S.P. Singh and Sanjay Kumar Singh, for the Appellant; G.A., for the Respondent

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### **Judgement**

S.K. Phaujdar, J.

The present application u/s 482, Cr. P.C. has been filed by the applicants with a prayer to quash an order dated 10.6.1998 passed by the Chief Judicial Magistrate, Robertsganj, District Sonebhadra in Criminal Case No. 4 of 1994 which emerged out of Case Crime No. 306 of 1993 u/s 467/468/471/420, I.P.C., P.S. Chopan, District Sonebhadra. The impugned order indicates that in the aforementioned case, after investigation, a final report was submitted but the Court had refused to act upon the final report. The Court rather perused the statements u/s 161, Cr. P.C. and had directed further investigation. Thereafter a report was submitted that investigation was complete but arrest of the accused persons was awaited. These accused persons were, however, not traceable despite attempts to arrest them in the recorded address. Accordingly, on the prayer of the Investigating Officer, the Court had directed issuance of process u/s 82, Cr. P.C. against the accused persons and this part of the order has aggrieved the present applicants.

2. Three points were raised at the time of arguments by the learned Counsel for the applicants. Appearance was made on behalf of the complainant and the points were

duly answered. It was stated by the Petitioner that the Magistrate could not, after submission of a final report, direct a further investigation. This submission, in my view, is untenable on the face of the text of the law, as stated in Section 173(8), Cr. P.C. Police is required to submit a report u/s 173(2), Cr. P.C. after completion of investigation. This report could either be a charge-sheet or a final report. Section 173(8) states that "Nothing in this section shall be deemed to preclude further investigation in respect of an offence after a report under Sub-section (2) has been forwarded to the Magistrate and, where upon such investigation, the officer-in-charge of the police station obtains further evidence, oral or documentary, he shall forward to the Magistrate a further report or reports regarding such evidence in the form prescribed....." A final report, and in that sense a charge-sheet also, is merely an opinion of the Investigating Officer based on the materials in the case diary and the Court is not bound to accept the opinion and, if investigation was not done properly, the Court must have the power to direct a further investigation. There is, therefore, no impropriety so far giving a direction of further investigation after submission of final report. The case law reported in [Randhir Singh Rana Vs. The State Being the Delhi Administration](#), has no application on the facts of the present case.

3. The second point that has been raised by the applicants relates to an interpretation of Section 195, Cr. P.C. The learned Counsel proposed to say that without a complaint from the revenue court where the allegedly forged documents were presented, a prosecution could not have been launched. The learned Counsel relied on several decisions in this regard. In the case of Surjit Singh and Ors. v. Balbir Singh (XXXII)1996 ACC 343, a three Judges' Bench of the Supreme Court held that for taking cognizance of an offence the document, the foundation for forgery, if produced before the Court or given in evidence, the bar of taking cognizance u/s 195(1)(b)(ii) gets attracted and the criminal court is prohibited to take cognizance of offence unless a complaint in writing is filed as per the procedure prescribed u/s 340 of the Code. In the concerned case, however, the document was filed in Court long after cognizance for the offence was taken. Reliance was also placed on another decision of the Supreme Court, recorded by the two Judges, as in 1983 SCC 822. This also speaks of cognizance of offences mentioned in Section 195(1)(b)(ii) of the Code of Criminal Procedure and states that cognizance could not be taken in the absence of written complaint by the Court concerned. The third case law on this point is a decision by the Allahabad High Court as reported in (XIX)1982 ACC 34. It was observed herein by a Division Bench of this High Court that the bar of cognizance is applicable whether or not offences mentioned in Section 195, Cr. P.C. are committed prior to or after initiation of the proceedings. This case law, in my view, stands clarified in the judgment of the Supreme Court in Surjit Singh's case (supra).

4. Another decision relied upon by the applicants in this connection stand reported in [Sardul Singh Vs. State of Haryana](#), , an Hon'ble single Judge of Punjab and Haryana High Court has held in this case that an offence is covered u/s 195, Cr. P.C.

not only cognizance is barred except upon a complaint from the concerned Court, investigation is also barred. On this point, however, a distinction may be made. What is barred by Section 195, Cr. P.C. is cognizance as thought of u/s 190(1)(a)(b)(c) of the Code of Criminal Procedure. Cognizance would be taken only after submission of police report and there is nothing in Section 195, Cr. P.C. which bars an investigation into the offence. As regards the true scope of Section 195, Cr. P.C., there is a latest decision of the Supreme Court in the case of [Sachida Nand Singh and Another Vs. State of Bihar and Another](#), . It was observed herein by three Judges of the Supreme Court that when forgery was committed before the document was produced in Court, Section 195(1)(b)(ii) would not stand on the way of cognizance. It was observed that offence envisaged in the aforesaid section must involve acts affecting the administration of justice and the provisions curbing the general jurisdiction of Court are to be given strict interpretation. The Hon"ble Court observed "It would be a strange thinking that any offence involving forgery of a document if committed far outside the premises of the Court and long before its production in the Court could also be treated as one affecting administration of justice merely because that document later reached the Court records." In view of this interpretation, it is felt that the objection concerning Section 195, Cr. P.C. may not be raised by the applicants to challenge action of the Magistrate.

5. I may now come to the third aspect of the argument regarding legality of the order dated 10.6.1998 whereby the Court had, on an application by the Investigating Officer, directed issuance of processes u/s 82, Cr. P.C. against the applicants. It appears that the Investigating Officer had reported to the Court on 10.6.98 that investigation was completed but the accused persons could not be arrested as they were not available in their work premises because of closure of the factory. Accordingly, the Investigating Officer had prayed for issuance of processes under Sections 82 and 83, Cr. P.C. and the Court had merely on that prayer and merely on the allegation that they were not traceable in the last known address, directed issuance of processes. Section 82 speaks of issuance of proclamation for a person said to be absconding and Section 83 speaks of issuance of warrant of attachment of the property of such absconder. For Section 82, there must be a report before the Magistrate that the person, against whom a warrant was issued by him, had absconded or had been concealing himself so that such warrant could not be executed. The sine qua non for an action u/s 82 is, therefore, prior issuance of warrant of arrest by the Court and consequences thereon as indicated in this section. An attachment warrant could be issued only after issuance of proclamation. In the absence of any material on record to show that the Court had, on any earlier occasion, issued any warrants of arrest against the applicants, the order directing issuance of proclamation cannot be sustained.

6. The present application in question stands allowed only in part so far issuance of proclamation is concerned. The direction for issuance of proclamation is quashed. The Magistrate is to look afresh to the records to proceed according to law. It is

reiterated that the direction for further investigation is confirmed and the objection against cognizance is overruled.