

## Krishna Gopal Singh and Others Vs State of U.P.

**Court:** Supreme Court of India

**Date of Decision:** Feb. 9, 1999

**Acts Referred:** Constitution of India, 1950 " Article 136

Penal Code, 1860 (IPC) " Section 395, 427

Uttar Pradesh Provincial Armed Constabulary Act, 1948 " Section 6

**Citation:** AIR 2000 SC 3616

**Hon'ble Judges:** K. T. Thomas, J; D. P. Mohapatra, J

**Bench:** Division Bench

**Final Decision:** Dismissed

### Judgement

1. Appellants herein were formerly members of the Pradeshik Armed Constabulary of the State of Uttar Pradesh. On the allegation of a revolt

having been committed by members of the P.A.C. at Fatehpur proceedings have been initiated against the appellants departmentally as well as

before the criminal Court for various offences. Though the trial Court acquitted all the appellants a Division Bench of the High Court of Allahabad,

on an appeal filed by the State, set aside the order of acquittal and convicted all of them under different provisions, but the sentence was limited to

the period of imprisonment which each of the appellants had already undergone. In the light of the aforesaid sentencing process adopted by the

Division Bench of the High Court it would not have been necessary for the appellants to approach this Court but we understand that the effort was

to get rid of the stigma of conviction for helping the appellants to have the service benefits unaffected.

2. The provisions under which appellants were convicted are the following:

Section 148, Section 395, Section 427 read with Section 149 of the Indian Penal Code; Section 6(b) and Section 6(c) of the U.P. Pradeshik

Armed Constabulary Act, 1984 and Section 3 of the Police (Incitement to Disaffection) Act, 1922.

3. The substance of the allegations made against the appellants was this :

The first appellant exhorted the other members of the P.A.C. to take arms as army had set out from Kanpur to take over the charge of Fatehpur

Armed Reserve center on the orders of the State Government. Upon the said exhortation all the appellants and some other members of the

Constabulary broke open the armoury and took out arms and ammunitions therefrom and pitched them at various places to meet the oncoming

army. Some of them proceeded to police lines also.

4. It is admitted by the learned Counsel for the respondent-State that none among the appellants is alleged to have inflicted any injury to any other

person or to have intimidated any person with injury. For sustaining a conviction u/s 395, I.P.C. a finding is sine qua non that appellants have

committed the offence of robbery and if the number of the assailants crossed the figure of five the offence would escalate to Section 395. But

accepting the entire allegations against appellants to be true we fail to notice any material to bring the offence within the contours of the definition

u/s 390 (robbery) I.P.C. In view of the aforesaid deficiency learned Counsel for the respondent state could not persist with his contention for

sustaining the conviction u/s 395 of the Indian Penal Code. That section has to go out from the purview of the convictions consequently.

5. Similarly, the offence u/s 427 also cannot be pressed into service as none of the appellants is alleged to have committed any act ""with intent to

cause or knowing that he is likely to cause, wrongful loss or damage to the public or to any person"". The offence of mischief as defined in Section

425 can be established only with strength of the allegations covering the ingredients enumerated in the said section. Learned Counsel for the State

has fairly conceded that the allegations in the charge are lacking as for those ingredients. If so, appellants cannot be convicted of the offence u/s

427 either.

6. The same benefit has to be extended to the appellants in relation to Section 6(b) of the U.P. Pradeshik Armed Constabulary Act. That Sub-

section reads thus:

6. More heinous offences.- An officer of the Pradeshik Armed Constabulary who-

(a) xxxxxx

(b) uses or attempts to use criminal force against or commits an assault on his superior officer, whether on or off duty;

(c) to (e) xxxxxx

shall, on conviction, be punished with imprisonment for life or with imprisonment for a term which may extend to fourteen years and shall also be

liable to fine.

7. We may note that regarding the said offence it has been fairly conceded that there is no allegation whatsoever for bringing the acts of the

appellants within the purview of the aforesaid provision.

8. So before we proceed to the remaining offences we set aside the conviction and sentence passed on the appellants for the offences covered by

the above-mentioned provisions.

9. An endeavour was made by the learned Counsel for the appellants to show that the trial Court was correct and the High Court was wrong in

entering a conviction against the appellants under the remaining Sections of offences. We have gone through the judgment of the High Court and

we heard learned Counsel with reference to the reasonings adopted by the trial Court. The High Court relied on the testimony of a large number of

eye-witnesses who were members of the Constabulary. The testimony of those eye witnesses extracted in the judgment of the High Court was

helpful to us in appreciating that the High Court has not gone wrong in reversing the order of acquittal. We are, therefore, not inclined to re-

appreciate the evidence in our jurisdiction under Article 136 of the Constitution.

10. Learned Counsel made a last plea that this Court may afford ameliorative reliefs to the appellants as otherwise this conviction would be used

for proceeding against them disciplinarily. It is for the appellants to approach the State Government for that purpose and it is not permissible for us

to make any observation either way. Without prejudice to the rights of the appellants to approach the State Government for securing ameliorative

reliefs for the service conditions on account of the conviction and sentence passed against the appellants, we dispose of this appeal in the terms

mentioned above.