

**(2007) 01 AHC CK 0033**  
**In the Allahabad High Court**  
**Case No : Criminal M.A. No. 15095 of 2006**

Kalim Ahmed

APPELLANT

Vs

State of U.P.

RESPONDENT

**Date of Decision :** 09-01-2007

**Acts Referred:**

Criminal Procedure Code, 1973 (CrPC) — Section 482  
Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS) — Section 21, 8  
Penal Code, 1860 (IPC) — Section 489C

**Citation :** (2007) 1 ACR 860

**Hon'ble Judges :** Saroj Bala, J

**Bench :** Single Bench

**Advocate :** S.T. Siddiqui, for the Appellant; A.G.A., for the Respondent

## Judgement

Saroj Bala, J.—This application u/s 482, Cr. P.C. has been moved for quashing of the criminal proceedings of Case Crime No. 252 of 2001 (S.T. No. 599 of 2006), State v. Kalim Ahmed u/s 489C, I.P.C. P.S. Chauk, district Varanasi pending before the Court of Additional Sessions Judge, Court No. 1, Varanasi.

2. Heard Shri S. T. Siddiqui, learned Counsel for the applicant, learned A.G.A. and have perused the record.

3. The factual matrix of case is that the applicant's residential premises No. CK 39/33 situated at Mohalla Kundi Ghar Tola were raided by the Sub-Inspectors Ram Murti Singh, Lal Bahadur Malvia and other police force on 2.11.2001 at 11.30 p.m. in pursuance of prior information about illegal trafficking of counterfeit currency notes. During the search the recovery of a plastic bag was made from the bathroom of applicant's premises in which woods were stored. On opening the plastic bag 100 currency notes of Rs. 500 denomination, 156 plain Kishan Vikas Patra and five packets of heroin were seized. The Case Crime No. 252 of 2001 u/s 489C, I.P.C. and Case Crime No. 253 of 2001 u/s 8/21 of N.D.P.S. Act were registered at P.S. Chauk, district Varanasi on the basis of one and the same recovery memo. The applicant was charged and tried for the

offence u/s 8/21 of N.D.P.S. Act in Criminal Case No. 93 of 2002 arising out of Crime No. 252 of 2001 and was acquitted by the judgment and order dated 1.4.2003, passed by the Special Judge (N.D.P.S.) Act, Varanasi.

4. The learned Counsel for the applicant submitted that recovery of contraband and fake currency was made from one and the same place and plastic bag and evidence in relation to the recovery having been disbelieved in Criminal Case No. 93 of 2002, the principle of stare decisis is applicable to the facts of the present case. The learned Counsel in support of his arguments placed reliance on the decisions in Prem Kumar alias Munna Rai and Anr. v. State of U.P. and Anr. 2005 (3) JIC 781 (All): 2005 (3) ACR 3121; Smt. Zahrun Nisa v. State of U.P. and Anr. 2005 (3) JIC 505 (All): 2006 (1) ACR 65; Smt. Begum and Ors. v. State of U.P. and Anr. 2005 (3) JIC 253 (All): 2005 (3) ACR 2472 ; Sanju alias Sanjeev Kumar v. State of U.P. and Anr. 2005 (3) JIC 243 (All): 2005 (3) ACR 3194; Sant Ram Master alias Santram Jaiswal v. State of U.P., 2005 (3) JIC 391 (LB) and Vijay Sahagal v. State of U.P. and others, 2006 (1) JIC 145 (All): 2006 (1) ACR 155, wherein it was held that where two persons are prosecuted though separately for the same charge for the offences in the same transaction and on the basis of same evidence, and if one of them is acquitted it will create an anomalous position if the other person is convicted.

5. The learned A.G.A. submitted that applicant has been acquitted in Criminal Case No. 93 of 2002 on the ground of non-compliance of the mandatory provisions of N.D.P.S. Act. The learned Counsel contended that trial in the present case has commenced after the framing of charges. The submission of the learned Counsel was that order of framing of charge having not been challenged has attained finality. According to the learned Counsel the principle of stare decisis is not applicable to the present case as applicant is not a co-accused and case crime number of the present offence is different.

6. I have taken into consideration the submissions advanced on behalf of both the parties, perused the judgment dated 1.4.2003, recovery memo and charge-sheet of both the case crime numbers.

7. On search of applicant's residential house No. C.K. 39/33 situated at Mohalla Kundi Ghar Tola, recovery of a plastic bag containing fake currency notes of Rs. 500 denomination, blank Kishan Vikas Patra and heroin was made from the bathroom in which woods were stored. The search was conducted by Sub-Inspectors Ram Murti Singh, Lal Bahadur Malvia and police constables. Both the above named Sub-Inspectors were produced and examined as P.W. 1 and P.W. 5 in Criminal Case No. 93 of 2002. The evidence of the witnesses conducting search and seizure was disbelieved by the trial court in Criminal Case No. 93 of 2002. The evidence of Sub-Inspectors Ram Murti Singh and Lal Bahadur Malvia indicates recovery of one fake currency note of Rs. 500 denomination and Kishan Vikas Patra and contraband was made from the plastic bag. The evidence of recovery in both the case is common. The evidence adduced by the same set of witnesses in relation to one and the same recovery having been disbelieved after

appraisal, the principle of stare decisis is applicable to the present case. The evidence of recovery having been disbelieved there are no chances of present case culminating in conviction. Consequently the application u/s 482, Cr. P.C. is allowed. The proceedings of Case Crime No. 252 of 2001 (S.T. No. 599 of 2006), State v. Kalim Ahmed Crime No. 252 of 2001 (S.T. No. 599 of 2006) under Section 489C, I.P.C. P.S. Chauk district Varanasi pending before the Court of Additional Sessions Judge, Court No. 1 Varanasi are hereby quashed. The sureties are discharged. The applicant need not surrender before the trial court.