

**(1947) 04 AHC CK 0005**

**In the Allahabad High Court**

**Case No : Civil Revisions No's. 70 and 71 of 1946**

KING EMPEROR

APPELLANT

Vs

KASHI PRASAD.

RESPONDENT

**Date of Decision : 17-04-1947**

**Acts Referred:**

Criminal Procedure Code, 1898 (CrPC) — Section 248  
Income Tax Act, 1961 — Section 52  
Penal Code, 1860 (IPC) — Section 177

**Citation : (1947) 17 AWR 280 : (1947) 15 ITR 450**

**Final Decision : Dismissed**

## Judgement

This revision is connected with Criminal Revision No. 71 of 1946 as the facts leading to the common point for determination are identical.

The Inspecting Assistant Commissioner of Income Tax, Cawnpore, filed two complaints against Kashi Prasad for his prosecution u/s 52, Income Tax Act, read with Section 177, Indian Penal Code, on the 14th August, 1944. The complaints were transferred to the Court of the Additional City Magistrate on the 18th August. The accused was summoned for the 9th September. He appeared that day. The complainant did not appear. Certain necessary documents were also not filed. On the 12th October the Magistrate sent a letter to the complainant saying that the case had been adjourned thrice for want of prosecution and that the next date fixed was the 18th October. On the 18th October the Magistrate received a letter from the complainant. It reads as follows :-

"I have the honour to request you kindly to send back the complaints filed in the above case because the records of the case are with the Income Tax Appellate Tribunal, Allahabad, and are not likely to be in our hands till the end of this week. The complaints will be presented against with all the connected documents".

The Magistrate wrote on this letter :- "Record be sent back."

The order sheet for this date said that the papers be sent back and the other papers be consigned to records.

On the 6th July, 1945, the two complaints were received back with a letter. On the 14th July the Court asked the complainant to file documents early and ordered that the files be taken out from the record room.

On the 5th September, 1945, the accused-applicant filed an objection to the revival of the proceedings on the main ground that the cases being summons cases, the withdrawal of the complaints on the 18th October, 1944, would be withdrawal u/s 248 Criminal Procedure Code, and its result would be the acquittal of the accused and that, therefore, he could not be tried on the same facts a second time. This objection of the accused applicant did not find favour with the Magistrate and the Sessions Judge. It is, therefore, that the applicant has filed this revision. We are of opinion that the revision has no force.

It is true that on the withdrawal of a complaint u/s 248, Criminal Procedure Code, an accused is to be acquitted as the section says :-

"It a complainant, at any time before a final order is passed in any case under this Chapter, satisfies the Magistrate that there are sufficient grounds for permitting him to withdraw his complaint, the Magistrate may permit him to withdraw the same, and shall thereupon acquit the accused."

The section, therefore, requires firstly that the complainant should make a request for the withdrawal of a complaint, secondly that he should satisfy the Magistrate that there are sufficient grounds for the Magistrate permitting him to withdraw the complaint, thirdly that the Magistrate should permit the withdrawal and lastly that the Magistrate should acquit the accused after he had permitted the withdrawal. None of these facts appears to have been in existence in the course of proceedings on the complaints in the suit.

The complainants letter, dated the 18th October, does not indicate in the least that the complainant desired to give up the prosecution of the accused-applicant on the allegations made in the complaint. No reasons is given in that application for any desire of the complainant to withdraw the charges. The order of the Magistrate on that letter is a very brief order and says nothing about his being satisfied with the ground, if any, for the withdrawal of the complaint. The Magistrate does not record that he is satisfied with the reasons and that he permits the withdrawal. In fact it does not appear from the record that the Court exercised any judicial discretion in the matter or even purported to pass any judicial order. The Court happened to have fallen into adopting a wrong procedure as there quest for the return of papers was made by a public officer. The papers filed in Court are not returned in that manner. The Magistrate passed no order about the fate of the accused. He neither said that the complaint was withdrawn nor that in the circumstances, that the complaints were returned to the complainant, the accused would be discharged or acquitted. It appears that the Magistrate treated the matter as a routine one and just noted on the letter received that the record be sent. This order was amplified by the Court reader in the order-sheet with respect to the papers which were not to be returned to the

Income Tax Commissioner. It would not be a matter for surprise if the order about the return of papers was passed by the Magistrate either outside the Court or in the absence of the accused. There appears nothing on the record to indicate that the cases were called up for hearing and that the order for the return of record was passed in the presence of the accused. We are of opinion that the complainants request for the return of papers did not amount to a request for the withdrawal of a complaint and that the Courts order, in any way, did not amount to any permission for the withdrawal of the case. It follows, therefore, that the order of the 18th October can in no way amount to an order u/s 248, Criminal Procedure Code. It cannot amount to an order of acquittal of the applicant.

The mere fact that the papers were returned to the complainant does not amount to the withdrawal of the complaint. The loss of the complaint paper or theft of the complaint paper by the complainant himself will not amount to a withdrawal of the complaint. The essential idea behind the withdrawal of a complaint is that the complainant desires not to take any further action against the accused on the basis of the allegations made against him or, in other words, that the complainant practically withdraws the allegations.

The order passed by the Magistrate was in effect an order granting an indefinite adjournment to the complainant in the special circumstances urged in the letter - the circumstances being that the necessary documents were not with the complainant but were with the Appellate Tribunal. The order for the return of the complaints to the complainant was a wrong order and related merely to the custody of the complaints and any error in that matter does not go to the root of that question.

Learned counsel for the applicant referred to the cases reported in Queen-Empress v. Sivarama, Queen v. Zuhoorul Huq and Queen-Empress v. Hussein Haji. All these cases are distinguishable. There the complaints were withdrawn. The actual orders passed were that the accused be discharged. It was held that the orders of discharge were wrong and that these orders really amounted to an order of acquittal which the law contemplates in those circumstances.

The view we have taken finds support from some reported cases. In Alopi Din v. King Emperor, it was observed at page 367 that :-

"a withdrawal by a Public Prosecutor is withdrawal from the prosecution of any person for any act or omission made punishable by any law; that is the Public Prosecutor states that he does not want to prosecute for certain alleged acts or omissions. In the present case there was no such statement by the Prosecuting Inspector. He merely stated that there was no case u/s 218, Penal Code."

In the present case the complainant did not even state in his letter dated the 18th October that there was no case against the accused and that he, therefore, wanted to get back the papers.

In *Shermull v. Corporation of Calcutta*, it was held that :-

"Section 247, Criminal procedure Code, gives the magistrate a discretion and the absence of a compliment 2 in a summons case cannot result in the acquittal of the accused without the magistrate passing any order in exercise of that discretion."

The principle enunciated is applicable to the present case. Unless the Magistrate passes an order that the complaints is allowed to be withdrawn the matter return of the complaint will not amount to same order of withdrawal and therefore, the consequences of a withdrawal will not follow.

In *Kanhaiyalal v. Baijnath Mahersi*, it is observed :-

"No consent of the Court to the withdrawal of the prosecution in respect of an offence u/s 363 was ever obtained and it is laid down in *Mst. Rujula v. Emperor* that an order passed u/s 494, Criminal Procedure Code, must be passed like any other considered order and the Magistrate is bound to give his reasons. A fortiori is the Magistrate bound to give his consent to a withdrawal; no tacit assent may be assumed. From the order passed - and this is the only record of what took place -it would appear that the Magistrate did not think that his consent was necessary. The Code lays down that the consent is necessary and the order giving the consent is, as has been held in this Court, a judicial order."

In that case the Magistrate ignored the complaint u/s 363, Indian Penal Code, on the statement of the Prosecuting Inspector that this section be dropped and the case was transferred to a Second Class Magistrate. It was, therefore, held that the order did not amount to an order granting withdrawal of the complaint. The same view was repeated in *Dattatraya Govindrao Pakode v. Emperor*.

The case may be looked at from another aspect. The order of the Magistrate for the return of the complaint was an order not contemplated by the Criminal Procedure Code. The Court has no jurisdiction to return the complaint. The order was, therefore, an invalid order and as such, can have no effect. Reference may be made to the case reported in *Mahadeo v. Emperor*.

Another way of looking at the case at this stage is that if the order of the Magistrate be taken to be an order granting withdrawal of the complaint, the order is bad inasmuch as no adequate grounds for the withdrawal of the complaint were put forward and the Magistrate did not exercise his discretion judicially in allowing the withdrawal of the case. If the complainant had known that his erroneous request for the return of the complaint instead of direct request for the adjournment of the case for a sufficiently long time had led to the acquittal of the accused, the complainant could have come up in revision and in all probability the order allowing the withdrawal and consequently acquitting the accused would have been set aside. This Court has the power to revoke the order granting withdrawal of a case. This has been held in *Satwarao Nagorao Hatkar v. Kanbarao Bhagorao Hatkar*, *Gopi Bari v. Emperor* and *Devendra Kumar Roy v.*

Syed Yar Bakht Chaudhary.

We are, therefore, of opinion that the order of the 18th October, 1944, did not amount to the grant of withdrawal of the complaint and, therefore, did not operate as an acquittal of the accused and that the present trial of the accused on the resubmission of the complaints in July, 1940, is valid.

We accordingly dismiss this revision.

Application dismissed.