

**State of Rajasthan Vs. Ramdevia**

**State of Rajasthan Vs. Ramdevia**

**SooperKanoon Citation :** [sooperkanoon.com/757876](http://sooperkanoon.com/757876)

**Court :** Rajasthan

**Decided On :** Nov-30-1970

**Reported in :** 1970WLN695

**Judge :** L.S. Mehta, J.

**Appeal No. :** S.B. Criminal Reference No. 225 of 1970

**Appellant :** State of Rajasthan

**Respondent :** Ramdevia

**Judgement :**

**L.S. Mehta, J.**

1. On February 13, 1970, the Prosecuting Sub-Inspector, Sikar, submitted a complaint under Section 109, Criminal Procedure Code, to the court of the Sub-Divisional Magistrate, Sikar. The complaint averred that Head Constable Hanuman Singh and Foot Constable Onar Singh spotted one person, Ramdevla Meena, who was hiding himself under suspicious circumstances behind a wooden shop near Chandpole Gate Bus Stand. On his having been questioned, he tried to run away. He was, however, apprehended with the help of one Dalai Jat. On inquiry he first mentioned his name as Rawtia Chejara of Sikar. He further told the police that he was returning home after seeing a cinema show and that he sat behind the wood in shop for urinating. Consequently it was found that that person was Ramdevla

Meena. At the time of the arrest a bunch of keys was recovered from his possession. Ramdevia was arrested by the police on suspicion that there was every likelihood of the commission of a cognizable offence by him. At the fag end of the complaint it was prayed that necessary proceedings against Ramdevla under Section 109, Cr. P.C., be taken. On receipt of the complaint, a notice was issued by the Sub-Divisional Magistrate, Sikar, to non-applicant in accordance with the provisions of Section 112, Cr. P C. Ramdevla denied the charge. He stated that he was apprehended by the police from the house of Girdharilal, his cousin brother, where he was having his dinner. Girdharilal also filed an affidavit, supporting Ramdevla's plea. Girdharilal further mentioned in the affidavit that Ramdevla had never committed any theft and that he earned his livelihood through manual labour. On the basis of the denial by the non-applicant and the affidavit filed by Girdharilal, the learned Sub-Divisional Magistrate, did not deem it necessary to proceed further with the case and dropped the proceedings, initiated under Section 109, Criminal Procedure Code.

2. A revision application was taken against the above order in the court of the Additional Sessions Judge, Sikar. The learned Judge observed in his order of reference that it was the duty of the Sub-Divisional Magistrate to fully inquire into the matter and try the case as laid down in Section 117, Criminal Procedure Code. The provisions under Section 117, the learned Judge adds, are mandatory and, therefore, the order to drop proceedings under Section 109, Cr. P.C., passed by the Sub-Divisional Magistrate, Sikar, is liable to be set aside. It is in this context that the present reference has been submitted, recommending that the impugned order of the Sub-Divisional Magistrate, Sikar, dated February 13, 1970, should be quashed.

3. A case under Section 109(a), Cr. P.C., starts only when the Magistrate is of opinion that there is reason to believe that the person is taking precaution with a view to commit any offence. In other words, the initiation of such a case depends upon the subjective satisfaction of the Magistrate concerned. The naturally corollary of this is that if the Magistrate reaches the conclusion that there is no reasonable ground to believe that a person was taking precautions with a view to commit any offence, he is at liberty to drop the case. It is true that there is no

specific provision in any of the sections of Chapter VIII in the Code of Criminal Procedure, specifically empowering a Magistrate to drop the proceedings when once they have commenced. But it seems that such a power may legitimately be inferred. Thus, a Magistrate has power to drop proceedings initiated under Section 309, Cr. P.C., at any stage as soon as he is convinced that there is no reasonable ground for believing that a person was taking precautions with a view to commit any offence.

4. In support of the above proposition, reliance is placed on an analogous case reported as *Sheokaran v. Dulla*. The relevant observations are quoted below:

Section 117, does not lay down that all the evidence that may be sought to be produced must be recorded by the Magistrate. If, therefore, the Magistrate can come to the truth at an earlier stage, he has jurisdiction to drop the proceedings.

Similarly in *Chatha Ittaman v. State* AIR 1863 T.C. 24 it has been observed:

When on cogent grounds he (Magistrate) is satisfied that there is no likelihood of a breach of peace arising on account of all or any of the persons against whom a preliminary order under Section 107 is drawn up there is nothing in the Code which prevents him from dropping that enquiry in whole or in part and discharge the persons concerned.

In *Asghar Khan v. State* AIR 1964 All. 891 Broome J. held:

A Magistrate has power to drop proceedings initiated under Section 107, Cr. P.C., at any stage, as soon as he is satisfied that there is no danger of a breach of the peace. Initiation of a case under Section 107 depends on the subjective satisfaction of the Magistrate concerned. If the Magistrate sees reason to change his mind and on reconsideration comes to the conclusion that there is after all no sufficient ground for proceeding, he should be at liberty to drop the case even after he has passed an order under Section 112. Although there is no provision in Sections 107, 112 and 117 specifically empowering a Magistrate to drop the proceeding once they have been started; such power may legitimately be inferred.

5. Section 117, which relates to the inquiry after the order under Section 112, Cr. PC, has been read or explained, directs that the Magistrate shall proceed to inquire into the truth of information upon which action has been taken and to take such further evidence as may be necessary. It does not lay down that the entire evidence that may be sought to be produced has got to be recorded by the court. In other words, when the Magistrate positively reaches the conclusion that the complaint under Section 109. is frivolous, it would be fruitless to continue the inquiry under Section 117, Cr. PC. Of course, if the Magistrate exercises a discretion in an arbitrary manner and chooses to close the evidence of one or the other party, his order is subject to connection.

6. In the present case the petitioner has not cared to produce any document, supporting the allegations of the non-applicant's involvement in a crime. The applicant has also failed to produce the bunch of keys alleged to have been recovered from the possession of the non-applicant. Beside, there is an affidavit on record, filed by Girdharilal, who is a responsible Government servant. This document shows that Ramdevla was taking meals with Girdharilal at about 8 p.m., on February 12, 1970, and that he had never committed any theft in the past. In these circumstances, the learned Sub-Divisional Magistrate, Sikar, was justified in dropping the proceedings under Section 109, Cr. P.C., before recording the entire evidence. There was no illegality in the procedure adopted by him. The Magistrate could drop the proceedings under Section 109, Cr. P.C. at any stage, as soon as he was satisfied that no reasonable grounds existed to believe that the person concerned took precautions with a view to commit a crime. The view of the learned Additional Sessions Judge, Sikar, that once a Magistrate makes an order under Section 112, Criminal Procedure Code, he cannot drop the proceedings, by must go on with the case in accordance with the procedure laid down in Section 117, Cr. P.C., seems to be erroneous.

7. The reference is according rejected.