
(2008) 11 AHC CK 0044
In the Allahabad High Court

Abdul Aziz and Others	Vs	APPELLANT
State of U.P. and Others		RESPONDENT

Date of Decision : 28-11-2008

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 397, 482

Citation : (2009) CriLJ 1683 : (2010) 127 FLR 493

Hon'ble Judges : Vijay Kumar Verma, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Vijay Kumar Verma, J.—"Whether the prospective accused can challenge the order directing investigation of the case after registration of the FIR", is the main question that falls for consideration in this application u/s 482 of the Code of Criminal Procedure (in short, "the Cr. p. C.") by means of which, the order dated 12-11-2008 passed by the Judicial Magistrate, Court No. 8, Allahabad on application No. 293/XII of 2008 (Smt. Baby v. Abdul Aziz and Ors.) has been challenged.

2. By the impugned order, the application moved by Smt. Baby (Opposite party No. 2) u/s 156(3), Cr.P.C. has been allowed and S.O. P.S. Kareli (Allahabad) has been directed to investigate the case after lodging the F.I.R. on the basis of that application.

3. Heard Sri Shahbuddin, learned Counsel for the applicants, learned A.G.A. for the State and perused the record.

4. At the outset, a preliminary objection has been raised by the learned AGA about maintainability of the application u/s 482 Cr.P.C. against the impugned order and it is contended by him that the order passed u/s 156(3) Cr.P.C. directing investigation of the case after registration of the FIR cannot be challenged by the prospective accused either in the proceeding u/s 482 Cr.P.C. or in Revision u/s 397 Cr.P.C. and hence the application in present case moved by

the applicants u/s 482 Cr.P.C. is liable to be rejected on this ground alone.

5. It is submitted by learned Counsel for the applicants that with mala fide intention with a view to harass the applicants, application u/s 156(3) Cr.P.C. was moved by Smt. Baby with entirely false allegations and hence, impugned order can be quashed by this Court in its inherent jurisdiction u/s 482 Cr.P.C.

6. Having given my thoughtful consideration to the rival submissions, I find force in the aforesaid preliminary objection raised by the learned AGA. As stated hereinabove, the application moved by opposite party No. 2 Smt. Baby u/s 156(3) Cr.P.C. has been allowed by the court below vide impugned order and S.O. P.S. Kareli (Allahabad) has been directed to investigate the case after registration of the FIR. In my considered opinion, such order cannot be challenged by the prospective accused either in Revision or in the proceeding u/s 482 Cr.P.C. Reference in this regard may be made to the case of Gulam Mustafa @ Jabbar v. State of U.P. and Ors. 2008 (61) ACC 922 : 2008 (6) ALJ (NOC) 1160 (All). This matter was also considered by this Court in the case of Prof. Ram Naresh Chaudhary and Anr. v. State of U.P. and Ors. 2008(60) ACC 476 : 2008 (2) ALJ 55.

7. In para 9 of the case of Prof. Ram Naresh Chaudhary v. State of U.P. (supra), following observations have been made:

At this stage accused does not come into picture at all, nor can he be heard. He has no locus to participate in the proceedings. He can at the most stand and watch the proceedings. It must be remembered that it is pre-cognizance stage. The nature of the order passed by the Magistrate u/s 156(3) Cr. P.C. directing registration and investigation of case is only a peremptory reminder or intimation to the police to exercise its power of investigation u/s 156(1) Cr. P. C, as has been held by Hon"ble Apex Court in the case of Devarapalli Lakshminarayana Reddy and Others Vs. V. Narayana Reddy and Others, How such a reminder is subject to revisional power of the Court is something which goes beyond comprehension. From the nature of the order itself, it is clear that it is an interlocutory order, not amenable to revisional power of the Court. Section 397(2) Cr.P.C. specifically bars revision filed against interlocutory orders.

8. This Court in the case of Kuran Singh v. State 1997 (34) ACC 163, has observed as follows:

Where an order is made u/s 156 (3) Cr.P.C. directing the police to register FIR and investigate the same, the Code no- where provides that the Magistrate shall hear the accused before issuing such a direction, nor any person can be supposed to be having a right asking the Court of law for issuing a direction that an FIR should not be registered against him. Where a person has no right of hearing at the stage of making an order u/s 156(3) or during the stage of investigation until Courts takes cognizance and issues process, he cannot be clothed also with a right to challenge the order of the Magistrate by preferring a revision under the Code. He cannot be termed as an "aggrieved person" for

purpose of Section 397 of the Code.

9. Thus at the stage of Section 156(3) Cr.P.C. any order made by the Magistrate does not adversely affect the right of any person, since he has got ample remedy to seek relief at the appropriate stage by raising his objections. It is incomprehensible that accused can- not challenge the registration of F.I.R. by the police directly, but can challenge the order made by the Magistrate for the registration of the same with the same consequences. The accused does not have any right to be heard before he is summoned by the Court under the Code of Criminal Procedure and that he has got no right to raise any objection till the stage of summoning and resultantly he can- not be conferred with a right to challenge the order passed prior to his summoning. Further, if the accused does not have a right to install the investigation, but for the limited grounds available to him under the law, it surpasses all suppositions to comprehend that he possesses a right to resist registration of F.I.R.

10. Distinguishing Division Bench ruling in the case of Ajay Malviya v. State of U.P. 2000 (41) ACC 435 : 2000 All LJ 2730 this Court in the case of Rakesh Puri and Anr. v. State of U.P. and Anr. 2006 (56) ACC 910 : 2007 (1) ALJ 169 has held as under:

To sum up the discussions made above, it is clear that the alleged accused has no right to challenge an order passed u/s 156(3) Cr.P.C. at pre-cognizance stage by a Magistrate and no revision lay against such an order at the instance of the alleged accused u/s 397(1) Cr.P.C. being barred by Section 397(2) Cr.P.C. nor at his instance an application u/s 482 Cr.P.C. is maintainable for the simple reason that if cognizable offence is disclosed in an application filed by the aggrieved person, then his such an application must be investigated to bring culprits to books and not to thwart his attempt to get the FIR registered by rejecting such an application which will not amount to securing the ends of justice but will amount to travesty of it.

11. Again this matter was considered in detail by this Court in the case of Chandan v. State of U.P. and Anr. 2007 (57) ACC 508 : 2007 (1) ALJ (NOC) 7 (All.) in which, it was held that accused does not have any right to challenge an order passed u/s 156(3) Cr.P.C.

12. Relying upon the decision of the Apex Court in the case of Central Bureau of Investigation Vs. State of Rajasthan and Another, it was held by this Court, in the case of Rakesh Puri v. State 2007 (1) ALJ 169 supra as follow:

It is preposterous even to cogitate that a person has a right to appear before the Magistrate to oppose an application seeking a direction from him for registration and investigation of the offence when he has no right to participate in the said ex parte proceeding. If permitted this will amount to killing of foetus of investigation in the womb when it was not there at all. Such power has not been conferred under the law on the prospective accused.

When the accused does not have any right to participate in a proceeding, how can he be permitted to challenge an interlocutory order passed in such a proceeding. If an accused cannot stop registration of a complaint u/s 190(1)(a) Cr.P.C. howsoever fanciful, mala fide or absurd the allegations may be, he certainly does not possess the power to stall registration of FIR of cognizable offence against him.

13. In view of the law laid down in the aforesaid cases; I am of the considered opinion that the prospective accused has no right to stop the registration of the FIR and its investigation by the police either by filing Revision or moving application u/s 482 Cr.P.C. Although after registration of the case in pursuance of the order passed u/s 156(3) Cr.P.C., the accused can move the High Court in its writ jurisdiction under Article 226 of the Constitution of India for quashing of the FIR, but prior to the registration of the F.I.R., the prospective accused has no right to challenge that order. Therefore, in present case also, the application moved by the applicants u/s 482 Cr.P.C. to set aside the impugned order deserves to be rejected.

14. Consequently, the application u/s 482 Cr.P.C. is hereby rejected.

Let a copy of this order be sent by the office to the Judicial Magistrate, Court No. 8, Allahabad, who is directed to ensure that proper investigation is made after lodging the F.I.R.; in pursuance of the impugned order dated 12-11-2008 passed by him on application No. 293/XII of 2008 (Smt. Baby v. Abdul Aziz and Ors.) u/s 156(3) Cr. P.C. P.S. Kareli (Allahabad).