
(2013) 04 AHC CK 0032
In the Allahabad High Court
Case No : Case No. 491 of 2004

Ajai Pal and Others

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 22-04-2013

Acts Referred:

Citation : (2013) 83 ALLCC 354

Hon'ble Judges : Surendra Singh, J

Bench : Single Bench

Advocate : Ran Vijay Singh, for the Appellant;

Final Decision : Allowed

Judgement

Surendra Singh, J.—Case is called out. None is present on behalf of opposite party Nos. 2 and 3, even in the revised list. No counter-affidavit has been filed either on behalf of the State or the private respondents. Heard learned Counsel for the applicants and A.G.A. for the State and perused the material placed on the record.

2. The applicants by way of filing this application u/s 482 Cr.P.C. have sought to quash the impugned order passed by IInd Additional District and Sessions Judge, Court No. 2, Sultanpur dated 10.2.2004 in Criminal Revision No. 322 of 2002 (Bhajan Harijan v. State of U.P.) whereby order dated 29.10.2002 passed by learned Additional Chief Judicial Magistrate, Court No. 20, Sultanpur was quashed and direction was issued to the police concerned to register and investigate the case against the applicants and submit the report to the concerned Magistrate within a month.

3. The facts dropped in brevity are that the opposite party No. 3 had filed an application u/s 156(3) Cr.P.C. on 19.9.2002 before Additional Chief Judicial Magistrate-IV, Sultanpur seeking a direction for the police of Police Station Piparpur, District Sultanpur to register an F.I.R. against the accused-applicants under sections 147, 323, 504, 506 I.P.C. and under the provisions of S.C./S.T.

Act and investigate the crime in accordance with law. Learned Magistrate called for a report from the concerned police station and on perusal of the said report application of the opposite party No. 2 was rejected vide order dated 29.10.2002 on the ground that N.C.R. was already registered against the same cause of action and there was no necessity of issuing direction for registration of the case. Learned Magistrate further directed the police concerned to investigate the crime pursuant to the N.C.R. No. 53 of 2002. Feeling aggrieved respondent No. 3 preferred Criminal Revision before Additional Sessions Judge, Sultanpur which was captioned as Criminal Revision No. 322 of 2002 (Bhajan Harijan v. State of U.P.), Additional Sessions Judge, Sultanpur allowed the revision vide order dated 10.2.2004 setting aside the order dated 29.10.2002 passed by the learned Magistrate and allowed the application u/s 156(3) Cr.P.C. and further directed the Station Officer of Police Station Piparpur, District Sultanpur to lodge F.I.R. against the applicants and investigate the crime and thereafter submit the report within one month before the concerned Magistrate for necessary compliance.

4. It was argued by the learned Counsel for the applicants that revisional Court had no jurisdiction to disturb the finding recorded by the Court below. The revisional Court had exceeded its jurisdiction in examining the case on merits. It could have only seen the correctness, legality or propriety of the order under challenge but in the present case the Additional Sessions Judge had examined the case on merit and upset the finding recorded by the learned Magistrate. It was further argued that since N.C.R. No. 53 of 2002 of opposite party No. 3 was already registered against the applicants for the same cause of action, therefore, learned Magistrate had rightly declined to exercise the power conferred u/s 156(3) Cr.P.C. and rejected the application and permitted the police concerned to investigate the case related to the N.C.R.

5. Learned Counsel for the applicants has referred to section 156(3) Cr.P.C.

6. It was further argued that revisional Court had no jurisdiction to exercise the power of Magistrate while usurping the jurisdiction of learned Magistrate. Learned Sessions Judge in revision only could have remanded the matter and directed the Magistrate concerned to make afresh look into the matter and pass a fresh order u/s 156(3) Cr.P.C. It was contended that in view of the aforesaid circumstances the order under challenge is wholly illegal and without jurisdiction and, therefore, is liable to be set at rest.

7. Learned A.G.A. has fairly conceded that learned Sessions Judge had exceeded his jurisdiction while exercising the power so vested in Magistrate.

8. Taking note of submissions made by learned Counsel for the parties and having gone through the material placed on the record, I am of the considered view that learned revisional Court had travelled beyond jurisdiction and usurped the power of the Magistrate while directing the police concerned to register and investigate the case u/s 156(3) of Cr.P.C. It is not expected from the Additional Sessions Judge to trample the judicial discipline and direct the police concerned

to register and investigate the crime against the accused-applicants when it was not called for. The impugned order under challenge, therefore, suffers from manifest illegality and deserves to be set aside.

9. In view of above, impugned order dated 10.2.2004 passed by IInd Additional District and Sessions Judge, Court No. 2, Sultanpur dated 10.2.2004 in Criminal Revision No. 322 of 2002 (Bhajan Harijan v. State of U.P.) is hereby quashed. The application is accordingly allowed. The interim order dated 12.3.2004 passed by this Court is confirmed. Let a copy of this order be communicated forthwith to the Court concerned through fastest mode of communication for information and necessary compliance.