

(2015) 07 AHC CK 0253
In the Allahabad High Court
Case No : Criminal Revision No. 4964 of 2009

Ansari

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 24-07-2015

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 156(3), 397

Citation : (2016) 1 ACR 421 : (2015) 8 ADJ 461 : (2016) 1 ALJ 416

Hon'ble Judges : Vijay Lakshmi, J.

Bench : Single Bench

Advocate : Girish Singh, for the Appellant; Sarvesh and Virendra Pratap Pal, for the Respondent

Judgement

Vijay Lakshmi, J.—The instant revision has been preferred against the order dated 4.9.2009 passed by learned Chief Metropolitan Magistrate, Kanpur Nagar in Case No. 997 of 2009 (Mohd. Ansari v. Factory owner) whereby the application moved by the revisionist under Section 156(3) Cr.P.C. praying for registration of F.I.R. and investigation against the accused persons, has been rejected. Learned counsel for the revisionist and learned A.G.A. are present. No one is present for opposite party No. 2 despite the fact that Sri Sarvesh, Advocate, has filed his Parcha on behalf of opposite party No. 2.

2. Learned counsel for the revisionist prays that his revision petition is pending since the year 2009 and has become critically old. He submits that this has wrongly been listed in the category of infructuous cases and prays that the revision be decided on merits after perusing the record.

3. Heard learned counsel for the revisionist and the learned A.G.A. and perused the records.

4. It has been submitted by learned counsel for the revisionist that the impugned order has been passed by the learned Magistrate without inquiring into the facts given in the application and without considering the genuineness and correctness

of the case. It has further been submitted by him that the Court below has failed to consider the fact that the cloths which were found near the bank of the canal were factory uniform, to be used inside in the factory premises only and were not allowed to be used outside the factory which fact clearly shows that the deceased was present in the factory premises at the time of his death. As the deceased could not have gone outside the factory without permission of the factory owner, the drowning of the deceased in the canal gives rise to suspicion, which requires investigation by the police authorities.

5. It has further been submitted that the canal is only 5 ft. deep and a normal human being cannot drown in such a depth of water. Moreover, in the autopsy report a contusion of 5 c.m. x 4 c.m. and another of 6 c.m. have also been found on the body of the deceased making the whole story of drowning suspicious. The submission of learned counsel for the revisionist is that all these facts were pleaded before the Court below, praying for a direction to the S.H.O. to register F.I.R. and investigate the matter but the learned Magistrate ignored the pleadings and dismissed the application under Section 156(3) Cr.P.C. without application of mind.

6. Per contra learned AGA has opposed the prayer of the revisionist by submitting that the revision is without any force and is not maintainable in view of the Full Bench decision of this Court in Father Thomas case. Learned A.G.A. has submitted that as no evidence was produced by the revisionist in support of his submission before the Court below, his application was rightly dismissed by the learned Court Magistrate and he has not committed any mistake by rejecting the application under Section 156(3) Cr.P.C.

7. After having heard learned counsel for the parties and having considered the circumstances of the case, I am of the considered opinion that the arguments advanced by learned counsel for the revisionist have force and the submissions made by learned A.G.A. are without any substance.

8. So far as the maintainability of the revision is concerned, in Jagannath Verma Vs. State of U.P., of this Court has held that a revision filed against the order rejecting the application under Section 156(3) Cr.P.C. is maintainable. In the case of Jagannath Verma (supra), it has also been held that when a revision is filed under Section 397 Cr.P.C. against the order rejecting an application moved under Section 156(3) Cr.P.C., involving cognizable offence and praying for registration of F.I.R. and investigation by the police, opportunity of hearing should be afforded to the prospective accused or other person and no order should be made to his prejudice unless he has an opportunity of being heard in his own defence.

9. From perusal of the order passed by the learned Chief Metropolitan Magistrate, prima facie, it appears that the impugned order has been passed in a cursory and routine manner, ignoring the fact that there may be a possibility of its being a case of a murder, deserved to be duly investigated by police.

10. The post-mortem report of the deceased available on record shows the presence of one ante-mortem injury which is contusion 5 c.m. x 4 c.m. on the right frontal region of cranium, 6 cms. above the right eye brow. A perusal of the application moved by the revisionist under Section 156(3) Cr.P.C. shows that on 8.5.2009 he had moved an application apprehending murder of his son by opposite party No. 2, the copy of which is Annexure-2 on the record. Annexure-3 is the application sent by the revisionist to S.S.P., Kanpur Nagar which is dated 21.5.2009 in which he has clearly mentioned that on 8.5.2009 he went to P.S. Govind Nagar to lodge the F.I.R. but he was driven away and neither his F.I.R. was lodged nor investigation was done by the police. The applicant was not allowed even to meet with the employers of the deceased. The deceased was wearing the uniform of factory at the time of his death. His cloths and tiffin box were found inside the factory. All these facts shrouds the death of deceased with mystery requiring proper investigation by the police. But the police failed to perform its duty.

In Lalita Kumari Vs. Govt. of U.P. and Others, , the Supreme Court has deprecated the aforesaid tendency of police in the following words:

"what is necessary is only that the information given to the police must disclose the commission of a cognizable offence. In such a situation, registration of an FIR is mandatory. However, if no cognizable offence is made out in the information given, then the FIR need not be registered immediately and perhaps the police can conduct a sort of preliminary verification or inquiry for the limited purpose of ascertaining as to whether a cognizable offence has been committed. But, if the information given clearly mentions the commission of a cognizable offence, there is no other option but to register an FIR forthwith. Other considerations are not relevant at the stage of registration of FIR, such as, whether the information is falsely given, whether the information is genuine, whether the information is credible etc. These are the issues that have to be verified during the investigation of the FIR. At the stage of registration of FIR, what is to be seen is merely whether the information given ex facie discloses the commission of a cognizable offence. If, after investigation, the information given is found to be false, there is always an option to prosecute the complainant for filing a false FIR."

11. The impugned order does not disclose any sufficient reason on the basis of which the learned Magistrate has rejected the application under Section 156(3) Cr.P.C.

Considering all these facts and circumstances and the legal position, this revision is allowed. The impugned order dated 4.9.2009 passed by learned Chief Metropolitan Magistrate, Kanpur Nagar in Case No. 997 of 2009 (Mohd. Ansari v. Factory owner) is quashed and set aside.

The matter is remanded back to the learned Chief Metropolitan Magistrate, Kanpur Nagar with the direction to decide the application afresh by a reasoned

and speaking order after considering all the facts and circumstances of the case within three months from the date of receiving a certified copy of this order.