
(2010) 06 AHC CK 0019

In the Allahabad High Court

Case No : Criminal Miscellaneous Application No. 2705 of 2010

Arun Kumar Singh and others

APPELLANT

Vs

State of U.P. and another

RESPONDENT

Date of Decision : 09-06-2010

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 156(3), 482

Citation : (2010) 06 AHC CK 0019

Hon'ble Judges : Yogendra Kumar Sangal, J

Final Decision : Dismissed

Judgement

Yogendra Kumar Sangal, J.—Heard learned counsel for the petitioners, learned AGA for the State and perused the record.

2. An application under Section 156(3) Cr.P.C. was moved by the respondent No. 2 with the averments that on 04.01.2010 at about 10"O Clock in the day, petitioners along with some antisocial elements reached at Sanskrit Mahavidyala and started to dig foundation with an intention for construction with the help of labourers. After receiving information, she went there along with her nephew and asked them not to do so. Accused persons/opposite parties had badly abused her and Jagatpal Maurya had fired a shot from his licensee Gun with an intention to kill her but somehow she had not received any injury. Her Nephew namely Sachin was badly beaten by the accused/opposite parties Jhariram and Arun Kumar and they threatened them to kill. On their hue and cry several persons assembled their. Arun asked Jhariram to put his Motorcycle on fire and also asked him for escaping from there. Accordingly, they put their Motorcycle on fire. After firing the shots and abusing them they succeeded in escaping from there. Matter was informed to the Police but report was not lodged. S.P. and District Magistrate of district Pratapgarh were approached and they wee informed through registered post about the occurrence, even though no action was taken, hence the application was moved. On this report after going through the contents of the application and also seeing the application moved by the

respondent no. 2 under Section 154(3)Cr.P.C. to Superintendent of Police and after hearing in the matter, learned Magistrate was of the opinion that from the facts and circumstances of the case detailed in the application, a cognizable offence is made out and he directed the Police of P.C. concerned for registration of the case and to investigate in the matter. Aggrieved by this order, this application has been moved.

3. When it was inquired by the court from the learned counsel for the applicants that when the forum for seeking remedy of filing Revision before the Session Judge in the district concerned against the impugned order was available, why directly this court has been approached by the petitioners in the proceedings under Section 482 Cr.P.C., it was not sufficiently explained.

On inquiry, learned counsel for the petitioners, Shri Sampurnanand Shukla stated at bar that till today no FIR has been registered at ahe police station. Magistrate concerned will call explanation of S.H.O. concerned why the order passed by him still not complied and if no sufficient explanation is submitted, action shall be taken against him.

4. Again, learned counsel for the petitioners was inquired that if till today, the FIR has not been lodged against the petitioners how he can be treated aggrieved by the impugned order and how he came to know about the impugned order, it is also not sufficiently explained on their behalf. Learned counsel for the applicants challenged the impugned order passed by the learned Magistrate saying that learned Magistrate has not applied his mind before passing the impugned order. He further argued that already a report was lodged by the petitioners against the respondent nos. 2 and others regarding the occurrence dated 04.01.2010 concealing the fact of registration of the FIR by the petitioners, this application was moved. It was further argued that facts given in the application under Section 156(3) Cr.P.C. is neither reliable nor believable and an improbable story has been given in the application.

5. Under the provisions of Section 156(3) Cr.P.C. at this stage, learned Magistrate has only to see from the facts given in the application whether any cognizable offence is made out or not. It is not expected from the learned Magistrate at this stage to see all the ingredients of the offence are there or not. Only prima facie case is to be seen at this stage. Further as regards the defence of the accused petitioner, neither it was before the learned Magistrate at the time of passing the impugned order nor it was expected from him to see the defence case at this stage. At the most, it can be said in the present facts and circumstances of the case that now case registered against the petitioners under the order of the learned Magistrate is a cross version of the occurrence of the earlier version of the petitioners. It is established law that regarding the occurrence version of both the parties should be investigated by the investigating agency simultaneously.

6. From perusal of the facts given in the application under Section 156(3) Cr.P.C.

at this stage, it cannot be said that any cognizable offence is not made out from the facts given in it. There is no reason of interference by this Court in the impugned order passed by the learned Magistrate. Application has no force, accordingly the same is hereby dismissed.