
(1997) 09 AHC CK 0131

In the Allahabad High Court

Case No : Criminal Miscellaneous writ Petition No. 776 of 1997

Awadh Behari and Others

APPELLANT

Vs

IXth Addl. District Judge, Alld. and Others

RESPONDENT

Date of Decision : 01-09-1997

Acts Referred:

Constitution of India, 1950 — Article 226

Criminal Procedure Code, 1973 (CrPC) — Section 156(3), 401(2)

Citation : (1997) 09 AHC CK 0131

Hon'ble Judges : P.K.Jain, J

Final Decision : Dismissed

Judgement

P. K. Jain, J.—Heard Sri K.K. Tripathi learned Counsel for petitioner and Sri Phool Chand Singh, learned Counsel for respondent No. 3 and the learned AGA.

2. Respondent No. 3 had moved an application under Section 156 (3), Cr. C.P. before learned Magistrate which was disposed of by the learned Magistrate by the order dated 30/11/1996 directing that complaint case be registered and evidence under Sections 200 and 202, Cr.P.C. maybe recorded. This order was challenged by respondent No. 3 in Criminal Revision No. 1212 of 1996 which was allowed by revisional court by judgment and order dated 3/3/1997 whereby order dated 30/11/1996 was set aside and direction was made to the learned Magistrate to direct the police to register the case under Sections 498A, 323, 504, 506, IPC and Section 3/4, Dowry Prohibition Act and also to investigate the case.

3. In this petition the order of the learned Sessions Judge has been challenged on the ground that petitioner was not made party to the said revision and impugned judgment and order could not be passed without hearing the present petitioner. In view of the provision contained under Section 401(2), Cr.C.P. and secondly that after the application is moved by the complainant, the court may either proceed under Section 156(3), Cr. P.C. or treat it as complaint and proceed with the complaint in accordance with law which has been done by the learned Magistrate in the instant case. Learned Counsel for the respondent No. 3

contends that the petition is not maintainable as alternate remedy by way of criminal revision was available that till filing of the criminal revision before the Sessions Judge there was no order in favour of the petitioner, therefore, he was not necessary party to the criminal revision and lastly that learned Magistrate had taken into consideration extraneous material before passing the order dt. 30111996.

4. I agree with the learned Counsel for the respondent No. 3 and learned AGA that present petition is not maintainable as the petitioner has alternate remedy of challenging the impugned order dt. 331997 in a criminal revision. However, at the request of learned Counsel for the petitioner the present petition is being treated as a criminal revision and is being disposed of as such. It may be renumbered as are revision.

5. There is no merit in the contention of the learned Counsel for the revisionist. No adverse order was passed against the revisionist till order dated 331997 passed by revisional court, therefore, he was not a necessary party to the revision.

6. The other contention of the learned Counsel for the revisionist is that an application being moved before the Magistrate, he had option to proceed u/S. 156(3), Cr. P.C. or to take cognizance and treat it as a complaint and proceed in accordance with law. Without entering into this aspect of the matter it may be noted that before passing the impugned order dated 301119%, the learned Magistrate on receipt of the application under Section 156(3), Cr. P.C. called for a report from the police in which the police reported that there was likelihood of a compromise between the parties and, therefore, for the time being there was no need for registration of the case. From this it is evidence that the learned Magistrate at the out set did not opt to treat the application as a complaint. He directed for a police report which was beyond his jurisdiction. Under Section 156(3), Cr.P.C. learned Magistrate was required to find, if any, cognizable case is made out and if he was so satisfied he could have directed the police to register and investigate the case. In case he intended to treat the application as complaint, he could have straightaway taken cognizance and examined the complaint under Section 200, Cr. P.C. In any case he had no jurisdiction to direct for police inquiry or police report and act on the application of the complainant only on receipt of police report.

7. The revisional court has also committed error in directing the Magistrate to pass an order directing the police to register and investigate the case. If the order passed by the learned Magistrate was illegal, the revisional Court should have set it aside and should have directed the learned Magistrate to give a finding if any cognizable case is made out from the facts alleged and thereafter proceed in accordance with law under S. 156(3), Cr.P.C.

8. In the counteraffidavit filed by the respondent No. 3 it is mentioned that the case has already been registered. The revisionist Awadh Behari was apprehended

and bailed out. The police is investigating the case.

9. In this view of the matter since the order has already been acted upon and the case is being investigated no interference at this stage is called for. The petition which has been treated as revision, is hereby dismissed. The stay order/orders shall stand vacated. Revision dismissed.