

(1997) 02 AHC CK 0016

In the Allahabad High Court

Case No : Criminal Miscellaneous Application No. 255 of 1997

Brijesh

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 13-02-1997

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 156(3), 482
Penal Code, 1860 (IPC) — Section 201, 304B, 498A

Citation : (1997) 21 ACR 167 : (1997) 3 RCR(Criminal) 394

Hon'ble Judges : Kundan Singh, J

Bench : Single Bench

Advocate : Anil Kumar Singh, for the Appellant; A.G.A., for the Respondent

Judgement

Kundan Singh, J.—This is an application for quashing the order dated 6.12.1996 passed by the Magistrate concerned in Misc. Case No. 123 of 1996 under Sections 498A, 304B and 201, I.P.C., P.S. Tarwa, District Azamgarh whereby the Magistrate issued a direction to the Station Officer of the police station concerned to register and investigate the case.

2. It is asserted that Smt. Asha Devi wife of the applicant died on 21.11.1996 in the hospital due to her illness. Smt. Malti Devi, mother of the deceased, moved an application u/s 156(3), Code of Criminal Procedure before the Magistrate concerned on 2.12.1996 praying for a direction to the police to register and investigate the case. The submission of the learned Counsel for the applicant is that the deceased died of her natural death ; hence no prima facie case was made out against the applicant for the offences as stated above. As such, the Magistrate concerned had no jurisdiction to direct the police to accept the F.I.R. and conduct investigation in the case. The applicant filed his objection in the case but the Magistrate ignored to consider his objection and denied an opportunity of hearing at the time of passing of the Impugned order.

3. The contention of the learned Counsel for the applicant is that the power of the Magistrate u/s 156(3), Code of Criminal Procedure cannot be exercised

unless it is shown that the police has not registered the case inspite of best efforts. He relied on the case of Mahendra Kumar v. State of U.P. 1995 ACC 679.

4. I have given my anxious thought to the submission made on behalf of the applicant. The submission that the Magistrate was not empowered to issue a direction to the police to register and investigate the case unless it is shown by the complainant that the police has not registered the case inspite of the best efforts is not sustainable inasmuch as the Legislature has not left the victims of cognizable offences for investigation of such offences at the mercy or sweet-will of the police but the statute empowers the Magistrate to command the Station Officer to register and investigate any cognizable offence u/s 156(3), Code of Criminal Procedure and the case cited by the learned Counsel is not applicable to the facts and circumstances of the present case as the bail order in the above case was passed considering this ground and releasing the accused on bail but in the present case, the authenticity of the order has been challenged in inherent jurisdiction of the Court u/s 482, Code of Criminal Procedure The Division Bench of this Court has laid down a rule of law in the case of Surajmal and Ors. v. State of U.P. and Ors., 1993 ACC 81, that the Magistrate is fully competent to direct the police to register and investigate the case. Further, no provision of law imposes any condition or restriction on the exercise of the power of the Magistrate u/s 156(3), Code of Criminal Procedure.

5. So far as the second contention of the learned Counsel for the applicant that the applicant was not afforded opportunity of hearing before passing the impugned order is concerned, the Magistrate is not required under any provision of law to afford any opportunity of hearing to a proposed or alleged offender before the cognizance of the offence is taken or the case is registered, as such he has committed no illegality in ignoring the objection raised by the applicant before he passed the order directing the police to register the case against the applicant.

6. In the facts and circumstances stated above, I find no ground to quash the order of the Magistrate u/s 156(3), Code of Criminal Procedure directing the police to register and investigate the case.

Accordingly the application is rejected.