

(2005) 12 AHC CK 0022

In the Allahabad High Court

Case No : Criminal Miscellaneous Writ Petition No. 1216 of 2004

Daya Ram, Sri Ram, Arvind alias Guddu and Ritesh alias Kallu APPELLANT
Vs

State of U.P. and Panna Lal RESPONDENT

Date of Decision : 02-12-2005

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 154, 156(3), 362

Citation : (2005) 12 AHC CK 0022

Hon'ble Judges : Ravindra Singh, J

Bench : Single Bench

Advocate : Vinay Singh, for the Appellant; K.K. Misra and A.G.A., for the Respondent

Final Decision : Dismissed

Judgement

Ravindra Singh, J.—Heard Sri Vinay Singh learned Counsel for the petitioners, learned A.G.A. and Sri K.K. Mishra learned Counsel for the respondent No. 3.

2. This petition is filed with a prayer to quash the impugned orders dated 19.9.2003 passed by learned A.C.J.M., 4th, Jaunpur, whereby the application u/s 156(3) Cr. P. C. filed by the respondent No. 3 was allowed and the judgment and order dated 10.2.2004 passed by the learned Additional Sessions Judge, Fast Track Court No. 2, Jaunpur in Criminal Revision No. 512 of 2004 whereby the revision filed by the petitioners was dismissed.

2. From the perusal of the record it appears that in the present case an application u/s 156(3) Cr. P. C. has been filed by the respondent No. 3. The same was allowed by the learned Magistrate on 30.1.2003 and the Station Officer of the P.S. Jafarabad was directed to register a case and investigate the same, but this order dated 30.1.2003 was set aside by the learned Additional Sessions Judge, Fast Track Court No. 3, in Criminal Revision No. 61 of 2003 on 13.5.2003 whereby the revision was allowed and the matter was remitted to the court of Magistrate to pass a fresh order in accordance with the provisions of law.

Thereafter, the learned A.C.J.M., Court No. 15, Jaunpur rejected the application u/s 156(3) Cr. P. C. on 30.5.2003, but that order was set aside by the learned Additional Sessions

3. Judge, Fast Track Court No. 5, Jaunpur in Criminal Revision No. 321 of 2003 and the matter was again remitted back to the court of learned Magistrate to pass a fresh order in accordance with the provision of law. Thereafter, the matter was again considered by the learned A.C.J.M., 4th, Jaunpur and again he rejected the application u/s 156(3) Cr. P. C. on 5.9.2003. This order was not challenged by the respondent No. 3 before any superior court.

4. From the perusal of the order dated 5.9.2003 it appears that the learned Magistrate has rejected the application on the ground that in support of the allegation made in the application u/s 156(3) Cr. P. C. the photostat copies of the medical examination report, supplementary medical examination report and the X-ray report have been filed which are not admissible, but the respondent No. 3 again filed an application 156(3) Cr. P. C. in which the prayer of summoning the original medical examination report, supplementary medical examination report and the X-ray report was also made. This application dated 11.9.2003 was allowed by the learned A.C.J.M., 4th, Jaunpur on 19.9.2003 and the S.O. of P.S. Jafrabad was directed to register the case and investigate the same. Against this order the petitioners filed a criminal revision No. 512 of 2003. The same was dismissed by the learned Additional Sessions Judge, Fast Track Court No. 2, Jaunpur on 10.2.2004. In the present writ petition the order dated 19.9.2003 and the order dated 10.2.2004 are under challenge.

5. It is contended by the learned Counsel for the petitioners that the application u/s 156(3) Cr. P. C. was filed by the respondent No. 3 which was ultimately rejected on 5.9.2003 by the learned A.C.J.M., 4th, Jaunpur. That order has not been challenged before any superior court, but a second application u/s 156(3) Cr. P. C. was filed. The same was allowed by the learned Magistrate and the learned Additional Sessions Judge also dismissed the revision filed by the petitioners against that order. Both the orders are illegal which have not been passed in accordance with the provisions of law, because the subsequent application u/s 156(3) Cr. P. C. was not maintainable. It is barred by the provisions of law and the impugned order dated 19.9.2003 is barred by Section 362 Cr. P. C. It is further contended that even on the basis of the allegation made in application u/s 156(3) Cr. P. C. cognizance offence is not made out and the allegations are false and frivolous.

6. It is opposed by the learned A.G.A. and Sri K.K. Mishra learned Counsel for the respondent No. 3 by submitting that on the basis of the allegation made in the application u/s 156(3) Cr. P. C. prima facie cognizance offence is made out. In such circumstances the learned Magistrate was under obligation to direct the S.O. Of police station concerned to register a case and investigate the same, but the learned Magistrate has rejected the application on the technical ground that it was not supported by the original documents. The application was not

dismissed on its merits. Therefore, that defect was removed by the respondent No. 3 by way of filing a separate application u/s 156(3) Cr. P. C., in which the original documents were perused. After perusing the same the learned Magistrate directed the police station concerned to register the case and investigate the same. Therefore, there is no illegality or irregularity in the impugned order. The learned Additional Sessions Judge also passed the order dated 10.2.2004 dismissing the revision filed by the petitioner. It is also contended that the provisions of Section 362 Cr. P. C. are not applicable in the present case. Therefore, the impugned orders require no interference by this Court.

7. After considering the facts and circumstances of the case and the submission made by the learned Counsel for the petitioners, learned A.G.A. and Sri K.K. Mishra learned Counsel for the respondent No. 3 and from the perusals of the allegation made in application u/s 156(3) Cr. P. C. it appears that a prima facie cognizable offence is made out. In such circumstances the learned Magistrate was under obligation to direct the police station concerned to register the case and investigate the same. Therefore, the learned Magistrate did not commit any mistake by passing such order dated 19.9.2003 and there is no illegality in the impugned order dated 10.2.2004 passed by the learned Additional Sessions Judge, Fast Track Court No. 4, Jaunpur whereby the revision filed by the petitioners was dismissed.

8. The contention that the second application u/s 156(3) Cr. P. C. was not maintainable. In such cases only direction is given to the police station concerned to register the case and investigate the same in respect of those offenses which are cognizable. In such offenses the Officer In-charge of the police station concerned was under obligation to register the case and investigate the same as provided u/s 154 Cr. P. C. According to Section 154 Cr. P. C. every Information relating to the commission of a cognizable offence, if given orally to an officer in charge of a police station, shall be reduced to writing by him or under his direction, and be read over to the informant; and every such information, whether given in writing or reduced to writing as aforesaid, shall be signed by the person giving it, and the substance thereof shall be entered in a book to be kept by such officer in such form as the State Government may prescribe in this behalf.

9. The provisions of Section 156(3) Cr. P. C. are only to check the high handedness or arbitrariness of the Station Officer in-charge. Even according to provision of section 154 Cr. P. C. there is no basic requirement of any direction taken u/s 156(3) Cr.P.C. to lodge the F.I.R. of a cognizable offence. It is duty of the Officer In-charge that if any such information relating to commission of any cognizable offence is received, shall be reduced to writing. For passing the order u/s 156(3) Cr. P. C. there is no requirement of adducing any evidence, even it is not stage of assessing or scrutinizing any evidence. If any application u/s 156(3) Cr. P. C. is rejected on the technical ground as the application is supported by the

photostat copies of same documents. The second application u/s 156(3) Cr. P. C. may be considered if such technical objection is removed and if that application is allowed by the Magistrate such order shall not be barred by the provisions of Section 362 of the Cr. P.C.

10. In view of the aforesaid discussion the impugned order dated 19.9.2003 passed by the learned A.C.J.M. 4th Jaunpur and the order dated 10.2.2004 passed by the learned Additional Sessions Judge, Fast Track Court No. 4, Jaunpur in Criminal Revision No. 512 of 2003 are not suffering from any illegality. These orders are perfect orders, which require no interference by this Court. Therefore, the prayer for quashing the impugned order is refused.

11. Accordingly, the writ petition is dismissed and the interim stay order dated 23.2.2004 passed by this Court is vacated.