
(2010) 09 AHC CK 0355
In the Allahabad High Court
Case No : Criminal Revision No. 3548 of 2010

Devendra Singh and others	Vs	APPELLANT
State of U.P. and another		RESPONDENT

Date of Decision : 06-09-2010

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 397

Citation : (2011) 7 RCR(Criminal) 788

Hon'ble Judges : Shri Kant Tripathi, J

Final Decision : Dismissed

Judgement

Shri Kant Tripathi, J.—Heard the learned Counsel for the revisionists and the learned A.G.A. for the opposite party No. 1 and perused the record.

It appears that the respondent No. 2 moved an application under section 156(3), Cr.P.C., on which basis the learned Additional Chief Judicial Magistrate passed the order dated 19.8.2010, directing the Station Officer, Shikarpur to register the case and investigate the matter.

The learned Counsel for the revisionist submitted that the respondent No. 2 had already lodged a noncognizable report under section 155, Cr.P.C., therefore, the respondent No. 2 could move an application under section 155(2), Cr.P.C. But he moved the application under section 156(3), Cr.P.C. which was not maintainable. It was further submitted that when a noncognizable report had been registered there was no question for the registration of the F.I.R.

2. The respondent No. 2 has very specifically stated in the application filed under section 156(3), Cr.P.C. that her allegations were not correctly recorded by the police in the N.C.R. She therefore moved the application under section 156(3), Cr.P.C. with the allegations with cognizable offences had been committed by the revisionist.

Section 155, Cr.P.C. deals with the noncognizable reports. If any report regarding commission of noncognizable offence is given, that report is recorded under

section 155, Cr.P.C. and if the same allegation subsists, the prayer for investigation can be made under section 155(2), Cr.P.C. But when the allegations are made in regard to commission of cognizable offences with a prayer for police investigation, section 155, Cr.P.C. does not come into operation and in that event, the matter has to be dealt with in accordance with section 154, Cr.P.C. or section 156(3), Cr.P.C., as the case may be.

Therefore, the submission that section 155, Cr.P.C. was attracted in this case has no substance.

3. More so, at the stage of passing an order under section 156(3), Cr.P.C., the Magistrates are not required to embark upon an inquiry for finding truth in the allegations made in the application. Therefore, the application has to be taken at its face value and only it is to be seen whether the application discloses commission of any cognizable offence or not. If the answer is in affirmative the Magistrate may order for investigation. In view of the fact that the application moved under section 156(3), Cr.P.C. had disclosed commission of cognizable offences the impugned order seems to be perfectly correct and requires no interference.

The learned Counsel for the revisionists further submitted that the revisionists, being law abiding citizens, want to appear before the Courts below to seek bail, therefore, they may be provided some interim protection.

4. Keeping in view the facts and circumstances of the case, it is provided that if the revisionists Devendra Singh, Himansu and Sudhendu appear before the Courts below and apply for bail within one month, their bail prayer in Case No. 490 of 2010, under sections 323, 452, 308, 504 and 506 I.P.C. pending in the Court of Additional Chief Judicial Magistrate, Court No. 2 Bulandshahar shall be considered and disposed of by the Courts below in the light of the principles laid down by the Apex Court in the case of Lal Kamendra Pratap Singh v. State of U.P. and others, 2009(67) ACC 966 (SC)=2009(84) AIC 84 (SC).

5. Till the surrender of the revisionists Devendra Singh, Himansu and Sudhendu before the Court or expiry of the aforesaid period of one month, whichever is earlier, the revisionists shall not be arrested.

With the aforesaid observations the revision is dismissed.

Revision Dismissed.