
(2007) 03 AHC CK 0285
In the Allahabad High Court
Case No : Criminal Revision No. 4779 of 2006

Hari Krishna Das Gupta

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 16-03-2007

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 154(1), 156(1), 156(3), 16(3), 190

Penal Code, 1860 (IPC) — Section 201, 304

Citation : (2007) 2 ACR 1552

Hon'ble Judges : Vinod Prasad, J

Bench : Single Bench

Advocate : Sanjai Srivastava, for the Appellant; A.G.A., for the Respondent

Judgement

Vinod Prasad, J.—This revision has been filed by the revisionist Hari Krishna Das Gupta against the order dated 25.5.2006, by which the C.J.M., Rampur has treated his application u/s 156(3), Cr. P.C. to be a complaint and has directed for getting statement u/s 200, Cr. P.C. recorded.

2. Encapsulated facts are that revisionist Hari Krishna Das Gupta filed an application u/s 156(3), Cr. P.C. before C.J.M., Rampur with the allegations that his son Sita Ram Gupta was employed as an accountant in the factory of accused Surendra Kumar Gupta, Ramendra Kumar Gupta, Sachit Gupta alias Lucky and Smt. Rani Gupta where many chemicals of different type from Mentha Oil were manufactured. On 15.2.2006 at about 10/11 a.m. when he was on duty the factory got engulfed into the fire because of negligence and callousness of accused. There was no arrangement of fire fighting equipment in the factory nor there was any alternative arrangement for the same. Son of the applicant alongwith many other people were trapped in the factory and his son lost life because of the casualty. Applicant and his another son Anil Gupta when reached at the spot they were not allowed to enter inside the factory. It was alleged that the aforesaid accused intentionally got their factory set a blaze because they

never wanted to return the enormous loan, which they had taken from banks. One of the aggrieved persons Har Narayan had already got a F.I.R. lodged in respect of his nephew Laxmi Narayan as Crime No. 297/06 under Sections 304 and 201, I.P.C. Applicant Hari Krishna Das Gupta endeavoured to get his F.I.R. registered in respect of the death of his son Situ Ram Gupta but in vain. His application in this regard to the Officer-in-charge Police Station Civil Lines, Rampur dated 16.2.2006 also did not yield any result. It is further alleged in the application that post mortem on the body of the deceased was conducted in Government Hospital, Rampur and the dead body was subsequently cremated. With these allegations, the revisionist filed an application u/s 156(3), Cr. P.C. on 24.4.2006 before C.J.M., Rampur appending therewith the post mortem report of the deceased. By the impugned order dated 25.5.2006 his said application has been ordered to be registered as complaint case because of the reasons that the revisionist knew about the complete facts which order is questioned in this revision.

3. After hearing the learned Counsel for the revisionist and learned AGA, I am of the opinion that the impugned order cannot be sustained at all. Filing of a complaint or not filing of a complaint is a right vested in the aggrieved person or the victim. The aggrieved person never wanted to file a complaint to get the accused prosecuted in a complaint case u/s 190(i)(a), Cr. P.C. The Court cannot suo motu convert any application under Chapter XII for getting F.I.R. registered at a pre-cognizance stage into a complaint. The revisionist had approached the Magistrate at a pre-cognizance stage under Chapter XII, Cr. P.C. for getting the F.I.R. registered and matter investigated. Since the Magistrate was approached at a pre-cognizance stage, he was not empowered suo motu to convert an application into a complaint without the desire of the complainant. The procedure of complaint case from Sections 190 to 204, Cr. P.C. unerringly indicates that filing of a complaint reading of evidences bringing witnesses to give statements, all are the responsibilities of the complainant which in the present case the revisionist never wanted so much so that in the absence of complainant even his complaint can be dismissed. He wanted was that the F.I.R. be registered and the matter be investigated, since it disclosed the commission of cognizable offences. In the case of *Massuman v. State of U.P.*, 2006 (8) ADJ 9, this Court has laid down the law that once a cognizable offence is disclosed u/s 16(3), Cr. P.C. the Magistrate cannot refuse to direct the police to register the F.I.R. as it is the duty of the Magistrate to get the law observed by the police. It is foremost duty of the police to register F.I.R. of a cognizable offence u/s 154(1), Cr. P.C., and investigate the offence u/s 156(1), Cr. P.C. The power u/s 156(3), Cr. P.C. is conferred on the Magistrate to check arbitrary exercise of power by the police in the event of its refusal to register such F.I.R. which discloses cognizable offence. It was the duty of the Magistrate u/s 16(3), Cr. P.C. to direct the police to register the F.I.R. of cognizable offence since to get the law observed is the prime responsibility of the Magistrate. He is not expected to investigate into the matter which power does not lie with him. Investigation of the crime is realm of

the police and the Magistrate should not unnecessary burden himself by clothing himself with the duty of the police as well and to inquire into the offence himself specially when the dockets of the Courts are woefully loathed with unsurmountable load of work.

4. In this view of the matter since the application of the revisionist disclosed the cognizable offence, the Magistrate was expected to act in accordance with law under Chapter XII, at a pre-cognizance stage in an administrative jurisdiction within the periphery of power conferred upon him through that Section by keeping various pronouncement of the Supreme Court into consideration, which are already discussed, in the aforesaid judgment of *Massuman v. State of U.P.* (supra).

5. In view of above, this revision is allowed. The impugned order dated 25.5.2006 passed by C.J.M., Rampur on an application u/s 156(3), Cr. P.C. filed by revisionist registered as Misc. Case No. 163 of 2006, *Hari Kishan Das Gupta v. Surendra Kumar and others* Misc. Case No. 163 of 2006, is hereby set aside. The matter is remanded back to the Magistrate concerned to reconsider and decide the application of the revisionist u/s 156(3), Cr. P.C. in accordance with law within one month from the date of receipt of the copy of this order by him.

This revision is allowed.