
(2008) 12 AHC CK 0153
In the Allahabad High Court
Case No : U/S 482/378/407 No. 4195 of 2008

Jamuna Prasad Tiwari

APPELLANT

Vs

State of U.P.

RESPONDENT

Date of Decision : 11-12-2008

Acts Referred:

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

Citation : (2008) 12 AHC CK 0153

Hon'ble Judges : S.N.Shukla, J

Final Decision : Disposed Of

Judgement

Heard Mr.Sushil Kumar Singh, learned counsel for the petitioners as well as Mr.Rajendra Kumar Dwivedi, learned Additional Government Advocate.

The petitioners have challenged the order dated 7.11.2008, passed by the Chief Judicial Magistrate, Sultanpur on the application moved by the opposite party No.2, under Section 156(3) Cr.P.C., whereby the learned Chief Judicial Magistrate has issued direction to register and investigate the case.

Learned counsel for the petitioners has submitted that the deceased Kanhaiya Lal relative of the applicant/opposite party No.2 was a habitual offender and by profession he was thief. On 4th of July, 2008, he committed theft in the petitioners' house and he was caught hold and a First Information Report was also lodged by the petitioners against him on 4th of July, 2008. Since Kanhaiya Lal sustained injuries, he died and his death was entered in the General Diary of the Police Station Kurwar, district Sultanpur on 4th of July, 2008. The police conducted the investigation and found sufficient evidence against the deceased and submitted the police report under Section 173 Cr.P.C. before the court, which has been registered as Criminal Misc. Case No.88 of 2008. Now just to create a defence, the opposite party No.2 has moved the application under Section 156(3) Cr.P.C. on the basis of a concocted story that Kanhaiya Lal died, as he was attacked by the petitioners.

Through the supplementary affidavit he has also brought on record the First Information Report registered pursuant to the order passed by the learned Magistrate and has challenged the same on the strength of the decision of the Hon"ble Supreme Court rendered in the case of Uma Shankar Gopalika versus State of Bihar and another (2006) 2 Supreme Court Cases (Cri) 49, with the averments that this court can quash the First Information Report in exercise of powers provided under Section 482 of the Code of Criminal Procedure. The Hon"ble Supreme Court find that the petition of complaint does not disclose any criminal offence at all much less any offence either under Section 420 or Section 120B IPC and the present case is purely civil dispute between the parties for which remedy lies before a civil court by filing a properly constituted suit and expressed the view that in our opinion, in view of these facts allowing the police investigation to continue would amount to an abuse of the process of court and to prevent the same it was just and expedient for the High Court to quash the same by exercising the power under Section 482 Cr.P.C. which it has erroneously refused.

On the other hand the learned Additional Government Advocate Mr.R.K.Dwivedi, submitted that the facts of the present case are altogether different to the case dealt with by the Hon"ble Supreme Court as in the present case commission of an offence is apparent from the facts disclosed in the application moved by the opposite party No.2. More so in pursuance of the order passed by the learned Magistrate the First Information Report has been registered and after registering the First Information Report this court in exercise of powers provided under Section 482 Cr.P.C. cannot interfere in the investigation unless it takes cognizance of an offence after filing of the police report before it. Further if the petitioners are aggrieved with the First Information Report, they can challenge the same by adopting the proper recourse to law, but since the commission of offence is apparently disclosed from the First Information Report, the same cannot be quashed by this court under Section 482 Cr.P.C. In support of his contentions he cited a Full Bench Decision of the High Court rendered in the case of Ram Lal Yadava versus State of U.P. and others reported in ACC,1989 (26) page 181, in which the Full Bench of this court has held that the High Court has no inherent power under Section 482 Cr.P.C. to interfere with the investigation by the Police. The High Court has also no inherent power under Section 482 Cr.P.C. to stay the arrest of an accused during investigation. Further the Hon"ble Supreme Court in the case of Janata Dal versus H.S.Chowdhary and others reported in 1993 Supreme Court Cases (Cri) 36 has considered the judgment of Full Bench of this court rendered in the case of Ram Lal Yadava (Supra) in the following manner:

"157. The seven Judges Full Bench of the Allahabad High Court went into the matter very exhaustively in Ram Lal Yadav v. State of U.P. and held that "the power of the police to investigate into a report which discloses the commission of a cognizable offence is unfettered and cannot be interfered with by the High Court in exercise of its inherent powers under Section 482 Criminal Procedure

Code". This decision has overruled two earlier decisions of that Court in Prashant Gaur v.State of U.P. and Puttan Singh v.State of U.P."

After perusal of the First Information Report lodged pursuant to the order passed by the learned Magistrate, I am of the view that the same discloses commission of an offence, therefore, I am of the view that it is not such a case as it warrants the interference by this court. Therefore, I am not inclined to interfere in the investigation.

The petition is dismissed.

However, keeping in view the fact that the deceased was a habitual thief and he died after beating during the course of theft, I hereby provide that if the petitioners surrender before the court below and move an application of bail the same shall be considered and disposed of expeditiously in accordance with law.