
(2006) 10 AHC CK 0159
In the Allahabad High Court

Kumari Farmida alias Sona

APPELLANT

Vs

State of U.P.

RESPONDENT

Date of Decision : 04-10-2006

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 154, 156, 157, 2

Citation : (2006) 10 ADJ 83

Hon'ble Judges : Vinod Prasad, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Vinod Prasad, J.—An application u/s 156(3) Cr.P.C. was filed by the present revisionist Kumari Farmida @ Sona which was registered as Misc. Application No. 192 of 2006 Km. Farmida @ Sona v. Jogendar and Ors. before Special C.J.M. Kanpur Nagar. The allegations, which were levelled in the application, were that on 1.1.2006 Jogendar committed rape on her. The application u/s 156(3) Cr.P.C. was filed on 17.8.2006 after a gap of 7-1/2 months. The said application was accompanied along with an application given to the higher police officers. The learned Magistrate rejected the said application of the revisionist u/s 156(3) Cr.P.C. on the ground that it is a belated one and therefore he disallowed registration of the F.I.R. and investigation by police by its impugned order dated 2.9.2006.

2. I have heard learned Counsel for the revisionist and the learned A.G.A. at great length.

3. This Court is flooded with such type of revisions every day. The matter u/s 156(3), Cr.P.C falls under Chapter-XII Cr.P.C. It relates with the power of Police to investigate cognizable offences. The investigation into the offence which is contemplated u/s 156(3), Cr.P.C. is the same investigation which is to be carried out by the Police u/s 156(1), Cr.P.C. after registration of the F.I.R. u/s 154(1), Cr.P.C. There is no new investigation, which is to be carried out u/s 156(3) Cr.P.C.

In fact a comparison of Sections 154(3) and Section 156(3) Cr.P.C. indicates that the former Sections confers power to the Superintendent of Police and later Section confers power on the Magistrate to get the F.I.R. of cognizable offence registered and investigation done. In the case of State of Haryana and Ors. v. Bhajan Lal and Ors. 1992 SCC 426 the Supreme Court has dealt exhaustibly with this aspect of the matter. The apex court has laid down thus:

30. The legal mandate enshrined in Section 154(1), Cr.P.C. is that every information relating to the commission of a "cognizable offence" (as defined u/s (c) of the Code) if given orally (in which case it is to be reduced into writing) or in writing to "an officer in charge of a police station" (within the meaning of Section 2(o) of the Code) and signed by the informant should be entered in a book to be kept by such officer in such form as the State Government may prescribed which form is commonly called as "First Information Report" and which act of entering the information in the said form is known as registration of a crime or a case.

31. At the stage of registration of a crime or a case on the basis of the information disclosing a cognizable offence in compliance with the mandate of Section 154(1) of the Code, the concerned police officer cannot embark upon an enquiry as to whether the information, laid by the informant is reliable and genuine or Otherwise and refuse to register a case on the ground that the information is not reliable or credible. On the other hand, the officer in charge of a police station is statutorily obliged to register a case and then to proceed with the investigation if he has reason to suspect the commission of an offence, which he is empowered u/s 156 of the Code to investigate, subject to the proviso to Section 157. (As we have proposed to make a detailed discussion about the power of a police officer in the field of investigation of a cognizable offence within the ambit of Sections 156 and 157 of the Code in the ensuing part of the judgment, we do not propose to deal with those sections in extenso in the present context.) In case, an officer in charge of a police station refuses to exercise the jurisdiction vested in him and to register a case on the information of a cognizable offence reported and thereby violates the statutory duty cast upon him, the person aggrieved by such refusal can send the substance of the information in writing and by post to the Superintendent of Police concerned who if satisfied that the information forwarded to him discloses a cognizable offence, should either investigate the case himself or direct an investigation to be made by any police officer subordinate to him in the manner provided by Sub-section (3) of Section 154 of the Code.

33. It is, therefore, manifestly clear that if any information disclosing a cognizable offence is laid before an officer in charge of a police station satisfying the requirements of Section 154(2) of the Code, the said police officer has no other option except to enter the substance thereof in the prescribed form, that is to say, to register a case on the basis of such information.

(emphasis supplied on the under lying portion).

4. The under lying portion laid down by the apex court is the guiding principle for the Magistrate also u/s 156(3) Cr.P.C. as the purpose of Sections 154(3) and 156(3) Cr.P.C. are one and the same with the same consequences and the investigation which is to be done in both the eventualities are u/s 156(1) Cr.P.C. and there is no new investigation. The Magistrate u/s 156(3), Cr.P.C. is not required to hold a trial. He has to apply his mind only to determine as to whether any cognizable offence is disclosed or not and no more than this.

5. In the present case, the victim has levelled allegation of rape on her. In such matter delay is of no consequences. So far as the registering the F.I.R. is concerned the Magistrate by refusing the prayer for registration of F.I.R. and investigation has done great injustice to the victim which has resulted in miscarriage of justice.

6. In this view of the matter the impugned order passed by Special C.J.M. Kanpur Nagar in Criminal Misc. Case No. 192 of 2006 Kumari Farmida @ Sona v. Jogendar and Ors. u/s 156(3), Cr.P.C. Police Station Bitthur, district Kanpur Nagar cannot be sustained and has to be set aside.

7. The criminal revision is allowed. The impugned order dated 2.9.2006 in Misc. Case No. 192 of 2006 Km. Farmida @ Sone v. Jogendar and Ors. passed by Special C.J.M. Kanpur Nagar, is hereby set aside. The matter is remanded back to the court concerned to consider the application u/s 156(3), Cr.P.C. filed by applicant afresh in accordance with law and pass an order thereon within two weeks from the date of receipt of certified copy of this order.