
(2004) 10 AHC CK 0074

In the Allahabad High Court

Case No : Criminal Miscellaneous Application No. 7484 of 2004

Mohan Shukla and Others

APPELLANT

Vs

State of U.P. and Usman

RESPONDENT

Date of Decision : 05-10-2004

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 154, 155, 156(1), 156(2), 156(3)
Penal Code, 1860 (IPC) — Section 147, 323, 379, 427, 452

Citation : (2005) 2 ALT(Cri) 22

Hon'ble Judges : Amar Saran, J

Bench : Single Bench

Advocate : A.K. Shukla, for the Appellant; A.G.A., for the Respondent

Judgement

Amar Saran, J.—Heard learned counsel for the applicants and learned Additional Government Advocate representing the State.

2. This application u/s 482 Cr.P.C has been filed for quashing the entire proceedings in complaint case No. 3708 of 2000 pending before the Additional Chief Judicial Magistrate, Court No. 10, Ballia.

3. The basic ground for quashing the complaint proceedings arising out of an application u/s 156(3) Cr.P.C was that complaint proceedings were initiated on an application u/s 156(3) Cr.P.C dated 5.8.2000.

4. Learned counsel for the applicants contends that an application u/s 156(3) Cr.P.C could never be treated as a complaint and for this purpose the learned counsel has principally relied upon two decisions given by a learned Single Judge of this Court in the cases of Ram Anuj Dubey v. State of U.P. 2003(2) A.Cr. R. 1897 and Surya Nath Yadav v. State of U.P. and Ors., 2003(3) A.Cr.R. 2729. These decisions in turn relied upon another Single Judge decision in the case of Dinesh Chandra v. State of U.P., (41) 2000 ACC 831.

5. In the present case after perusing the application u/s 156(3) Cr.P.C. dated 5.8.2000 and examining the complainant u/s 200 Cr.P.C. and his witnesses u/s

202 Cr.P.C., the applicants were summoned on 7.9.2002 under Sections 323/504/506/427/379 IPC by the order of A.C.J.M-X, Ballia.

6. Learned counsel for the applicants contends that as the basic foundation for adopting the procedure of a complaint case on an application u/s 156(3) CrPC is illegal, the subsequent application u/s 156(3) Cr.P.C. is illegal, the judgment orders such as the order dated 7.11.2002 whereby the learned A.C.J.M refused to dismiss the complaint also become illegal.

7. It may be mentioned that the judgements of Hon"ble K.N. Sinha, J, relied upon by the learned counsel for the applicants, appear to be per-incuriam. These judgements have failed to consider the Full Bench decision of this Court in the case of Ram Babu Gupta v. State of U.P. (43) 2001 ACC 50. Before the Full Bench specifically one of the questions in issue was: " Is the observation of the Division bench in Suraj Mal (Supra) correct when it says that when an applicant before a Magistrate prays only for registration and investigation of a case, such an application will not become "complaint" as defined in Section 2 of the Cr.P.C. ? "

8. The specific answer to this question in the aforesaid Full Bench decision of this Court was given in paragraphs 18 and IV of the decision, which are as follows:

"18. Coming to the second question noted above it is to be at once stated that a provision empowering a court to act in a particular manner and a provision creating a right for an aggrieved person to approach a Court or authority, must be understood distinctively and should not be mixed up. While Sections 154, 155 Sub-section (1) and (2) of 156, Cr.P.C. confer right on an aggrieved person to reach the police, 156(3) empowers a Magistrate to act in a particular manner in a given situation. Therefore, it is not possible to hold that where a bare application is moved before court only praying for exercise of powers u/s 156(3) Cr.P.C, it will remain an application only and would not be in the nature of a complaint. It has been noted above that the Magistrate has to always apply his mind on the allegations in the complaint where he may use his powers u/s 156(3) Cr.P.C. In this connection it may be immediately added that where in an application, a complainant states facts which constitute cognizable offence but makes a defective prayer, such an application will not cease to be complaint nor can the Magistrate refuse to treat it as a complaint even though there be no prayer seeking trial of the known or unknown accused. The Magistrate has to deal with such facts as constitute cognizable offence and for all practical purposes even such an application would be a complaint. This Court can do no better than refer to the following observations in Suresh Chand Jain (Supra):-

The position is thus clear. Any judicial Magistrate, before taking cognizance of the offence, can order investigation u/s 156(3) of the Code ... could take further steps contemplated in Chapter XII of the Code only thereafter. "

19. In view of the aforesaid discussion, the observation in the two paragraphs noted above in Suraj Mal (Supra), cannot be said to be laying down correct law,

therefore, those observations shall remain confined to the decision in Suraj Mal. The second point formulated above stands also answered thus. "

9. In this view of the mailer, there is absolutely no illegality if after treating an application u/s 156(3) Cr.P.C as a complaint, the Magistrate proceeded to record the statements of the complainant and witnesses under Sections 200 and 202 Cr.P.C and passed the order dated 7.11.2002 taking cognizance on the basis of the complaint.

10. It is noteworthy that an MR dated 20.6.2000 was also registered against the applicant on the same allegations as ease crime No. 222 of 2000 under Sections 147/323/504/506/452/379/427 IPC and on the basis of that FIR also, the applicants had been charge sheeted, vide charge sheet No. 6 of 2001 dated 6.1.2001 under Sections 323/504 IPC.

11. By the order dated 16.4.2004 (which curiously has not been annexed) although it has been shown as Annexure 9 to the affidavit supporting the application, the court concerned has passed the order u/s 210 Cr.P.C consolidating both the cases on the basis of the FIR and complaint. In my view, this is a very salutary course adopted by the Magistrate as the police report and the complaint case relate to the same subject matter and it was indeed expedient in the interest of justice that the Magistrate should have tried both the complaint case and the case arising out of police report as if both cases were instituted upon a police report in the light of Section 210(2) Cr.P.C.

12. In this view of the matter, there is no force in this application u/s 482 Cr.P.C. It is accordingly dismissed.

13. As the incident is dated 20.6.2000 and on some technical pleas the applicants have succeeded in getting the mailer delayed for the last four years and three months, it is now expedient in the interest of justice that the trial court may be directed to conclude the proceedings in this case expeditiously, preferably within six months. However, in view of the fact that the dispute in question was a sudden dispute, which arose between co-villagers over fining up of a drain (nabdan) and no serious injuries are alleged to have been received by the side of the complainant and also as the police have only submitted a charge sheet under Sections 323/504 IPC, if the applicants have not yet obtained bail, they may apply for bail. In case the applicants appear before the trial court within one month and apply for bail in the aforesaid case, their bail application shall be considered and disposed of expeditiously.

14. Application rejected subject to the aforesaid observations.