
(2014) 07 AHC CK 0033
In the Allahabad High Court
Case No : Crl. Revision No. 1029 of 1990

Molhu Prasad

APPELLANT

Vs

State of U.P.

RESPONDENT

Date of Decision : 16-07-2014

Acts Referred:

Constitution of India, 1950 — Article 21

Criminal Procedure Code, 1973 (CrPC) — Section 154, 156(3), 157, 159, 164

Penal Code, 1860 (IPC) — Section 326A, 326B, 354, 354A, 354B

Citation : (2015) 1 ACR 148

Hon'ble Judges : Ranjana Pandya, J

Bench : Single Bench

Advocate : S.K. Singh and V.K. Singh, Advocates for the Appellant

Judgement

Ranjana Pandya, J.—This revision has been preferred against the order dated 9.4.1990 passed by A.C.J.M.-I, Gorakhpur on application dated 3.8.1989 moved by the revisionist. Brief facts are that on 3.8.1989, the revisionist moved an application before the lower court stating that on 18.7.1989 at about 5:00 a.m. when he was going to the railway station, the accused Sri Ram Gupta, Jai Ram Gupta s/o. Munnialal resident of Nausad, P.S. Belipur came on motor-cycle and robbed him Rs. 1,500 and an H.M.T. watch on the point of knife. On his raising alarm, witnesses Paras Gupta s/o. Basdev and Hari Nath s/o. Shyam Sunder resident of Nausad P.S. Belipur reached on the spot.

2. The complainant submitted written report to the police but neither the F.I.R. was registered nor any action was taken to apprehend the culprits. Consequently, he sent information to the S.S.P. through registered post. Since he was unable to file the complaint, he filed an application on 3.8.1989 requesting the Court to give direction to S.H.O., Rajghat to register and investigate the case. On which, order was passed to the effect that S.H.O. may enquire and register a F.I.R.

3. Feeling aggrieved the complainant has come up in the present revision.

4. I have heard learned A.G.A. Learned counsel for the revisionist was present at the time of revised call.

5. Perusal of the record shows that on the request of the complainant several reminders were sent to S.H.O., Rajghat for sending the result of investigation who ultimately sent a detailed report on 26.3.1990. In the report, it was mentioned that the allegations of the complaint was found false. The application was moved due to enmity and after investigation, no occurrence were found to have been taken place. Thus, S.H.O., Rajghat did not register the case as desired by the complainant. In order to substantiate the investigation, the Inspector recorded statement of the complainant and nine other persons and concluded that no occurrence took place on 3.8.1989 as alleged by the complainant.

6. In continuation of the order dated 3.8.1989, S.H.O., Rajghat was directed to register the case and investigate the same, but in the preliminary inquiry he found no such case has occurred. This information was sent to the court. Thereafter the court further directed him to personally enquire into the matter and sent report to the Court. At this, S.H.O. thoroughly conducted inquiry and concluded that even the witnesses as named by the complainant did not support the version of the complainant. It was argued on behalf of the complainant that regarding statements of 10 witnesses was unwarranted and the S.H.O. should have registered the case without entering into any inquiry.

7. Perusal of the impugned order shows that the S.H.O. was directed to hold an inquiry also and the order states that after inquiry the case be registered but when the S.H.O. inquired, he found the case to be false. It was incumbent on the S.H.O. to follow the direction of the court. This will settled that law should not be interpreted according to the wishes and convenience of the parties but it should be done according to the spirit of the provisions.

8. The police had every right to conduct primary inquiry and investigate before the registration of an F.I.R. In non-cognizable case, the police could not conduct any investigation without an order of the Magistrate. The case in hand is in respect of an offence under Section 392, I.P.C. which is a cognizable case and it is well-settled law that in cognizable case, no order to investigation is required by the Magistrate.

9. Section 154, Cr.P.C. runs as follows:

"154. Information in cognizable cases.--(1) Every information relating to the commission of a cognizable offence, if given orally to an officer in charge of a police station, shall be reduced to writing by him or under his direction, and be read over to the informant; and every such information, whether given in writing or reduced to writing as aforesaid, shall be signed by the person giving it, and the substance thereof shall be entered in a book to be kept by such officer in such form as the State Government may prescribe in this behalf:

Provided that if the information is given by the woman against whom an offence

under Section 326A, Section 326B, Section 354, Section 354A, Section 354B, Section 354C, Section 354D, Section 376, Section 376A, Section 376B, Section 376C, Section 376D, Section 376E or Section 509 of the Indian Penal Code (45 of 1860) is alleged to have been committed or attempted, then such information shall be recorded, by a woman police officer or any woman officer:

Provided further that--

(a) in the event that the person against whom an offence under Section 354, Section 354A, Section 354B, Section 354C, Section 354D, Section 376, Section 376A, Section 376B, Section 376C, Section 376D, Section 376E or Section 509 of the Indian Penal Code (45 of 1860) is alleged to have been committed or attempted, is temporarily or permanently mentally or physically disabled, then such information shall be recorded by a police officer, at the residence of the person seeking to report such offence or at a convenient place of such person's choice, in the presence of an interpreter or a special educator, as the case may be;

(b) the recording of such information shall be videographed;

(c) the police officer shall get the statement of the person recorded by a Judicial Magistrate under Clause (a) of sub-section (5A) of Section 164 as soon as possible.

(2) A copy of the information as recorded under sub-section (1) shall be given forthwith, free of cost, to the informant.

(3) Any person, aggrieved by a refusal on the part of an officer in charge of a police station to record the information referred to in sub-section (1) may send the substance of such information, in writing and by post, to the Superintendent of Police concerned who, if satisfied that such information discloses the commission of a cognizable offence, shall either investigate the case himself or direct an investigation to be made by any police officer subordinate to him, in the manner provided by this Code, and such officer shall have all the powers of an officer in charge of the police station in relation to that offence."

10. Thus, Section 154, Cr.P.C. provides a forum to the person aggrieved by a refusal by officer incharge of a police station to record information referred to in sub-clause (1) of Section 154, Cr.P.C. and states that such person may send substance of such information, in writing or by post to the Superintendent of Police concerned who is satisfied that such information discloses the commission of cognizable offence which he can either investigate case himself or direct investigation to be made by any police officer subordinate to him but the revisionist has not filed any copy of application addressed to the S.S.P. instead the revisionist moved an application under Section 156(3), Cr.P.C. which provides that any Magistrate empowered under Section 190, Cr.P.C. may order an investigation by the police in a cognizable case on (a) upon receiving of complaint of facts which constitute such offence; (b) upon police report; (c) upon

information received from any person other than police officer, or upon his own knowledge that such offence has been committed; that if a complaint is filed before the Magistrate, he can also treat it as a complaint and record the statement of the complainant under Section 200, Cr.P.C.

11. In *Lalita Kumar v. Government of U.P. and others*, 2014 (1) JIC 166 (SC), it has been held that:

"In terms of the language used in Section 154 of the Code, the police is duty bound to proceed to conduct investigation into a cognizable offence even without receiving information (i.e., F.I.R.) about commission of such an offence, if the officer in charge of the police station otherwise suspects the commission of such an offence. The legislative intent is therefore, quite clear, i.e., to ensure that every cognizable offence is promptly investigated in accordance with law. This being the legal position, there is no reason that there should be any discretion or option left with the police to register or not to register an F.I.R. when information is given about the commission of a cognizable offence. Every cognizable offence must be investigated promptly in accordance with law and all information provided under Section 154 of the Code about the commission of a cognizable offence must be registered as an F.I.R. so as to initiate an offence. The requirement of Section 154 of the Code is only that the report must disclose the commission of a cognizable offence and that is sufficient to set the investigating machinery into action. The insertion of sub-section (3) of Section 154, by way of an amendment, reveals the intention of the legislature to ensure that no information of commission of a cognizable offence must be ignored or not acted upon which would result in unjustified protection of the alleged offender/accused. The maxim expression *unius est exclusio alterius* (expression of one thing is the exclusion of another) applies in the interpretation of Section 154 of the Code, where the mandate of recording the information in writing excludes the possibility of not recording an information of commission of a cognizable crime in the special register. Therefore, conducting an investigation into an offence after registration of F.I.R. under Section 154 of the Code is the "procedure established by law" and, thus, is in conformity with Article 21 of the Constitution. Accordingly, the right of the accused under Article 21 of the Constitution is protected if the F.I.R. is registered first and then the investigation is conducted in accordance with the provisions of law. The term inquiry as per Section 2(g) of the Code reads as under: "2(g)--"inquiry" means every inquiry, other than a trial, conducted under this Code by a Magistrate or court." Hence, it is clear that inquiry under the Code is relatable to a judicial act and not to the steps taken by the Police which are either investigation after the stage of Section 154 of the Code or termed as "Preliminary Inquiry" and which are prior to the registration of F.I.R., even though, no entry in the General Diary/Station Diary/Daily Diary has been made. Though there is reference to the term "preliminary inquiry" and "inquiry" under Sections 159 and Sections 202 and 340 of the Code, that is a judicial exercise undertaken by the Court and not by the Police and is not relevant for the purpose of the present reference. It is true that the concept of

"preliminary inquiry" is contained in Chapter DC of the Crime Manual of the C.B.I. However, this Crime Manual is not a statute and has not been enacted by the legislature. It is a set of administrative orders issued for internal guidance of the C.B.I. officers. It cannot supersede the Code. In view of the above specific provisions in the Code, the powers of the C.B.I. under the D.S.P.E. Act, cannot be equated with the powers of the regular State Police under the Code."

12. In the present case, the application dated 3.8.1989 definitely not is in a form of complaint, so the order of investigation cannot be deemed to be an order under Section 156(3), Cr.P.C. It cannot also be treated a protest which was a simple application and the order was in the nature of interlocutory order.

13. The application was moved by the revisionist in the court for a direction to S.H.O., Rajghat to investigate and register a case. The receipt of information is not a condition precedent for investigation under Section 157, Cr.P.C. In cognizable offence cases, the officer in charge of a police station may investigate without any information. In the present case since S.H.O., Rajghat conducted detailed inquiry and opined that no occurrence as alleged in the application took place, hence, the ground of the S.H.O., Rajghat for not investigating the case is not baseless.

14. Hence, the order of court below does not suffer any illegality, impropriety and irregularity. Accordingly, the revision is dismissed.