
(2007) 07 AHC CK 0124

In the Allahabad High Court

Case No : Criminal Miscellaneous Case No. 1985 of 2007

Pramod Kumar Shukla

APPELLANT

Vs

State of U.P.

RESPONDENT

Date of Decision : 23-07-2007

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 156(3), 482

Citation : (2007) 07 AHC CK 0124

Hon'ble Judges : Vinod Prasad, J

Final Decision : Dismissed

Judgement

Vinod Prasad, J.—Custodial death is a slur on any civilised society. It projects criminality on the part of those who are custodians of law. Such crimes are inexcusable and deserve proper treatment. This case is one of such cases and has emanated from a very unfortunate incident. One Pappu Verma, a very young man at the prime age of his life, 37 years, lost his life in custody. His postmortem was conducted on 25.4.2007 at 6.15 p.m. In the postmortem examination report, a ligature mark was found on the upper part of his neck. The cause of his death was indicated as asphyxia as a result of antemortem hanging.

2. In respect of the death of Pappu Verma, an application under section 156(3) Cr.P.C. was filed by Babadeen, father of the deceased, on 26.4.2007. The allegations levelled in the application under section 156(3) Cr.P.C. were that Babadeen is a very poor person and his son aforesaid Pappu Verma (deceased) was detained in prison under the NDPS Act and he was being produced before the Court of law on the date of remand. Whenever Pappu Verma met Babadeen on the dates of his remand, he used to make complaints about P.K. Shukia, Jail Superintendent, Deputy Jailor Umesh Singh, constable Raman Prasad and constable Kaushal Kishore regarding demand of money of Rs. 1000/ from him and for nonfulfillment of the same assault him. Applicant Babadeen being a very poor person, could not arrange the said money. It was further alleged that, on 25.4.2007, because of nonfulfillment of the aforesaid demand the aforesaid

Pappu Verma was done to death by the aforementioned accused, persons and to cover up their design, accused persons have projected the crime as a suicide and sent the dead body for postmortem examination. With such allegations, the complainant filed an application under section 156(3) under Chapter XII Cr.P.C. relating to power of police to register the FIR of cognizable offence and investigate the offence disclosed, invoking administrative jurisdiction of the Magistrate to direct the police to register the FIR of a cognizable offence as, according to the applicant, the police have failed to register his FIR of cognizable offences regarding death of his son Pappu Verma.

3. It transpires from the record that on the said application, Chief Judicial Magistrate, Barabanki on 28.5.2007 ordered to register the application under section 156(3) Cr.P.C. as a complaint case citing ruling of the Apex Court in Lucknow Criminal Revision 2001(2) 320, Joseph Madhuri v. Swami Sachchidanand Hari Sakshi and fixed 2.6.2007 for recording of the statement under section 200 Cr.P.C. The said order was challenged by Babadeen before the Sessions Judge, Barabanki in Criminal Revision No. 102 of 2007, Babadeen v. State of U.P. The aforesaid revision was allowed by the Sessions Judge, Barabanki vide its impugned order dated 3.7.2007, who quashed the order of Chief Judicial Magistrate, Barabanki dated 28.5.2007 treating the application under section 156(3) Cr.P.C. as a complaint and remanded the matter to the Magistrate to pass a fresh order in accordance with the directions made in the order passed by the lower Revisional Court in the aforesaid revision.

4. The alleged accused persons of the murder of Pappu Verma have challenged the lower Revisional Court's order dated 3.7.2007 in this application under section 482 Cr.P.C. invoking the inherent jurisdiction of this Court.

5. I have heard Dr. L.P. Misra, assisted by Sri Sharad Pathak and Sri Sanjay Misra, Advocates in support this application and Smt. Suniti Sachan, learned AGA, on behalf of the State and Sri Farooq Ayub, learned Counsel for Babadeen, the victim.

6. Counsel for the applicants vehemently harangued that in this case Magisterial enquiry is already going on, therefore, there was no need for registration of FIR. Learned Counsel has contended that the CJM. Barabanki had not closed the matter for the informant and he directed to proceed with the case as complaint case and, therefore, the Revisional Court has committed manifest error by setting aside the order passed by the Chief Judicial Magistrate. Learned Counsel further contended that the deceased had committed suicide as is evident from the postmortem examination report and he was not murdered and the allegations levelled in the application under section 156(3) Cr.P.C. are wholly fictitious and mala fide. Learned Counsel further contended that once the Magisterial enquiry has been initiated, there was no need for registration of the FIR as that will frustrate the very purpose of Magisterial enquiry. Learned Counsel further contended that the Revisional Court wrongly relied upon caselaw of Madhubala v. Suresh Kumar. 1997 (35) ACC 371. Learned Counsel further

contended that the said judgment carry contrary views taken by the lower Revisional Court and invited the attention towards sections 2(g) and 2(h) Cr.P.C. and contended that the impugned order passed by the lower Revisional Court is unjustified and deserves to be set aside. Learned Counsel lastly argued that if the above contentions raised before this Court do not find favour, this Court should at least protect the interest of the applicants as the applicants are Government servants and they may be allowed to furnish personal bonds during the period of investigation.

7. Learned AGA, in contrary, vehemently contended that the applicants have no locus standi to maintain and challenge the order passed by the lower Revisional Court and further contended that Magisterial inquiry as well as registration of FIR can go simultaneously and there is no illegality in the impugned order passed by the lower Revisional Court and this petition deserves to be dismissed being meritless and not maintainable.

8. The first and foremost question which arises for consideration is that as to whether this application at the behest of the applicants who are alleged accused of an allegation of murder is maintainable or not?

9. Needless to say that the cart cannot be put before the horse. The Apex Court in the case in *Ramesh Kumari v. State* (NCT Delhi) 2006 (55) ACC 256 (SC) = 2006 (40) AIC 715 = AIR 2006 SC 1322. has held that if an application under section 156 (3) Cr.P.C. disclosed a cognizable offence, then the Magistrate cannot refuse to order for registration of FIR. Filing of complaint is a right vested in the complainant or the aggrieved person but the police is mandated under law to register FIR of every cognizable offence. It has been held as follows in the aforesaid judgement by the Apex Court:

"4. That the Police Officer mandatorily registers a case on a complaint of a cognizable offence by the citizen under section 154 of the Code are no more res Integra. The point of law has been set at rest by this Court in the case of *State of Haryana and others v. Bhajan Lal and others*, 1991 (28) ACC 111 (SC) = 1992 Supp (1) SCC 335. This Court after examining the whole gamut and intricacies of the mandatory nature of section 154 of the Code has arrived at the finding in paras 31 and 32 of the judgment as under: "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 under section 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 this judgment, we do not propose to deal with those sections in extensor 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 subsection (3) of section 154 of the Code."

"32. Be it noted that in section 154(1) of the Code, the legislature in its collective wisdom has carefully and cautiously used the expression "information" without qualifying the same as in section 41(1)(a) or (g) of the Code wherein the expressions, "reasonable complaint" and "credible information" are used. Evidently, the nonqualification of the word "information" in section 154(1) unlike in sections 41(1)(a) and (g) of the Code may be for the reason that the police officer should not refuse to record an information relating to the commission of a cognizable offence and to register a case thereon on the ground that he is not satisfied with the reasonableness or credibility of the information. In other words, "reasonableness" or "credibility" of the said information is not a condition precedent for registration of a case. A comparison of the present section 154 with those of the earlier Codes will indicate that the legislature had purposely thought it fit to employ only the word "information" without qualifying the said word. Section 139 of the Code of Criminal Procedure of 1861 (Act 25 of 1861) passed by the Legislative Council of India read that "every complaint or information" preferred to an officer in charge of a police station should be reduced into writing which provision was subsequently modified by section 112 of the Code of 1872 (Act 10 of 1872) which thereafter read that "every complaint" preferred to an officer in charge of a police station shall be reduced in writing. The word "complaint" which occurred in previous two Codes of 1861 and 1872 was deleted and in that place the word "information" was used in the Codes of 1882 and 1898 which word is now used in sections 154, 155, 157 and 189(c) of the present Code of 1973 (Act 2 of 1974). An overall reading of all the Codes makes it clear that the condition which is sine qua non for recording a first information report is that there must be an information and that information must disclose a cognizable offence." Finally, this Court in para 33 said : "

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(1) 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."

5. The views expressed by this Court in paragraphs 31, 32 and 33 as quoted above leave no manner of doubt that the provision of section 154 of the Code is

mandatory and the concerned officer is duty bound to register the case on the basis of such an information disclosing cognizable offence"

Observing as above in that case the Apex Court also ordered for investigation by CBI as the allegations were levelled against the police personals. Apex Court observed thus:

"8. Mr. Vikas Singh, learned Additional Solicitor General although vehemently opposed registration of the case but he fairly concedes that if at all the case be registered and investigation is to be carried out, the CBI would be an appropriate authority to register a case and investigate. We are also of the view that since there is allegation against the police personnel, the interest of justice would be better served if the case is registered and investigated by an independent agency like the CBI. 9. We, accordingly, direct that the CBI shall now register a case and investigate of the complaint filed by the appellant on 9.9.1997 and 13.9.1997. The CBI can collect the complaint from the SHO, Police Station, Kapashera dated 9.9.1997 and 13.9.1997. The complainant will also provide photocopies of the complaint dated 9.9.1997 and 13.9.1997 in case the original complaint is not traceable in the Police Station....."

10. Further in the case of Union of India v. W.N. Chadha, 1993 SCC (Cr) 1171. the Apex Court has held that the accused cannot be heard prior to any order passed against him. It has been held by the Apex Court as follows: "98. If prior notice and an opportunity of hearing are to be given to an accused in every criminal case before taking any action against him, such a procedure would frustrate the proceedings, obstruct the taking of prompt action as law demands, defeat the ends of justice and make the provisions of law relating to the investigation as lifeless, absurd and selfdefeating. Further, the scheme of the relevant statutory provisions relating to the procedure of investigation does not attract such a course in the absence of any statutory obligation to the contrary.

(Emphasis supplied)

11. This aspect of the matter has been dealt with in the case of Rakesh Puri and another v. State of U.P.2007 (1) ALJ 169. It has been held in the said decision as follows:

12. The above quoted passages unequivocally brings out the ambit of power of Magistrate under section 156(3) Cr.P.C. Under the said direction the Magistrate does not take the cognizance of the offence himself and the power is wielded by him at the precognizance stage falling under Chapter XII relating to the power of the police to investigate into the cognizable offence. Thus at the stage of section 156(3) Cr.P.C., a person against whom an application under the said section is filed does not come into the picture at all to participate in the proceedings. It is preposterous even to cogitate that a person has a right to appear before the Magistrate to oppose an application seeking a direction from him for registration and investigation of the offence when he has got no right to participate in the said ex prate proceeding. If permitted this will amount to killing of foetus of

investigation in the womb when it was not there at all. Such a power has not been conferred under the law on the prospective accused. See Hari Raj Singh v. State of U.P. 2007 (1) ALJ 169 : 2000 (46) ACC 1180., Brijesh v. State of U.P. 1997 (34) ACC 687 = (1997) All LJ 891. and others. Father Thomas v. State of U.P. and others 2002 (44) ACC 143 = 2001 All LJ 2943.

16. In the case of Chandra Deo Singh v. Prakash Chandra Bose, 1963 (1) SCR 202 = AIR 1963 SC 1430. it was observed by the Apex Court:

"Permitting the accused person to intervene during the inquiry would frustrate its very object and that is why Legislature has made no specific provision permitting an accused person to take part in the inquiry."

17. In the case of Superintendent of Police, C.B.I, and others v. Tapan Kumar Singh⁶. 2003 (46) ACC 961 (SC) = 2003 (6) AIC 559 = 2003 SCC (Cr.) 1305 = AIR 2003 SC 4140. dealing with registration of FIR by the police it has been held by the Apex Court (Para 20 of AIR):

"The true test is whether the information furnished provides a reason to suspect the commission of an offence, which the police officer concerned is empowered under section 156 of the Code to investigate. If it does, he has no option but to record the information and proceed to investigate the case either himself or depute any other competent officer to conduct the investigation. The question as to whether the report is true, whether it discloses full details regarding the manner of occurrence, whether the accused is named, and whether there is sufficient evidence to support the allegation are all matters which are alien to the consideration of the question whether the report discloses the commission of cognizable offence. Even if the information does not give full details regarding these matters the investigating officer is not absolved of his duty to investigate the case and discover the true facts, if he can."

(Emphasis mine)

26. Thus it is clear that under section 156(3) Cr.P.C. the Magistrate can only direct registration and investigation of the offences by the police. Can such an order be revisable under section 397 Cr.P.C. ? The answer is emphatic No. The accused nowhere comes into picture at that stage. Such a nature of order if allowed to be subjected to the revisional powers of the Court under section 397 Cr.P.C., then it will defeat the very purpose of section 156(3) Cr.P.C. for which it has been enacted in the Code and will open "Tsunamis" for the Revisional Courts and no investigation will be allowed to proceed. This was never the intention of the Legislature and framers of law. The aggrieved accused has been conferred the right to be heard at the appropriate stage by the Cr.P.C. and that certainly does not include the stage of section 156(3) Cr.P.C. Resultantly an order under section 156(3) is not revisable under section 397(1) Cr.P.C."

12. Section 156 (3) Cr.P.C is engrafted under CHAPTER XII Cr.P.C. which relates with the power of Police to register and investigate. Magistrate under section

156(3) Cr.P.C. does not take cognizance but at a pre cognizance stage it directs the police to register the FIR and investigate the offence. In the present case, the police had eschewed its statutory responsibility to register the FIR as has been held in Chaudhary Bhajan Lal v. State of Haryana, 1991 (28) ACC 111 (SC) = 1992 SCC (CrI.) 326. vide (paras 30, 31 and 33) quoted above. The said law was reiterated by time and again by the Apex Court. The said law was again reiterated by the Apex Court in Superintendent of Police, C.B.I, and others v. Tapan Kr. Singh, 2003 (46) ACC 961 (SC) = 2003 (6) AIC 559 = AIR 2003 SC 4140. as follows:

"20. It is well settled that a First Information Report is not an encyclopedia, which must disclose all facts and details relating to the offence reported. An informant may lodge a report about the commission of an offence though he may not know the name of the victim or his assailant. He may not even know how the occurrence took place. A first informant need not necessarily be an eyewitness so as to be able to disclose in great details all aspects of the offence committed. What is of significance is that the information given must disclose the commission of a cognizable offence and the information so lodged must provide a basis for the police officer to suspect the commission of a cognizable offence. At this stage it is enough if the police officer on the basis of the information given suspects the commission of a cognizable offence, and not that he must be convinced or satisfied that a cognizable offence has been committed. If he has reasons to suspect on the basis of information received, that a cognizable offence may have been committed, he is bound to record the information and conduct an investigation. At this stage it is also not necessary for him to satisfy himself about the truthfulness of the information. It is only after a complete investigation that he may be able to report on the truthfulness or otherwise of the information. Similarly, even if the information does not furnish all the details, he must find out those details in the course of investigation and collect all the necessary evidence. The information given disclosing the commission of a cognizable offence only sets in motion the investigative machinery, with a view to collect all necessary evidence, and thereafter to take action in accordance with law. The true test is whether the information furnished provides a reason to suspect the commission of an offence, which the concerned police officer is empowered under section 156 of the Code to investigate. If it does, he has no option but to record the information and proceed to investigate the case either himself or depute any other competent officer to conduct the investigation. The question as to whether the report is true, whether it discloses full details regarding the manner of occurrence, whether the accused is named, and whether there is sufficient evidence to support the allegations are all matters which are alien to the consideration of the question whether the report discloses the commission of a cognizable offence. Even if the information does not give full details regarding these matters, the investigating officer is not absolved of his duty to investigate the case and discover the true facts, if he can."

(Emphasis supplied)

13. The above quoted caselaws laid down by the Apex Court leave no room for doubt that the police is mandated under law to register FIR of every cognizable offence once the same is disclosed cognizable offence and investigate the same. In the present case the police had not done so.

In the present case accused persons wants to stall the investigation by resorting a device that complaint case may be allowed to be proceeded. How investigation is to be conducted and in what manner it is to be done is the concern of the police, accused cannot have a say in this matter.

14. From the discussions made above the applicants here in this application who are charged with custodial death of the son of the informant can not be heard at all. This application at their behest is not maintainable and is liable to be dismissed.

15. Coming to another aspect of the matter that the Chief Judicial Magistrate has ordered for proceeding with the case as a complaint case. In this case death occurred inside the jail. CJM concern never thought of the fact that from where the father isgoing to get evidence of murder and who will support his allegations. From where he is going to collect the evidence of murder against police personals. CJM, failed to realise that by not ordering investigation in fact he will be closing the case of the father who has lost his son inside jail. For him the chapter is closed for once and all. He will never come to know as to how his son had died. More over filing of a Complaint is another matter. First and foremost thing is that if the allegations levelled by the victim disclose commission of cognizable offence, why the Magistrate will refuse to direct the police to perform it's statutory responsibility. Magistrate cannot act on his whims. He is to see that the mandate of law is observed and not flouted. Registration of crime and investigation of offences is the prime duty of the police and it is for the Courts to see that the police performs it's statutory responsibility. Magistrate cannot investigate any offence. Why an investigation into offence of murder is not required is not understandable. In the present case CJM concerned has done most blatant injustice to the victim father who has approached him for seeking justice. This aspect of the matter has been dealt exhaustively by this bench in the case of Masuman v. State of U.P., 2007 (1)ALJ 169. It has been held in that decision as follows:

".....It, is the responsibility of the Magistrate to direct the police to follow the mandate of law and it will be a travesty of justice that the Magistrate instead of directing the police to follow the statutory mandate of law gives it a long rope to act arbitrarily at it's whims. Thus whenever the Magistrate is approached by an aggrieved person with the prayer that the police has refused to register his FIR of cognizable offence the Magistrate is required to look into his such prayer only to determine as to whether any cognizable offence is disclosed thereby or not and if it does, then he has no option but to direct the police to register the FIR and investigate the offence.

(Emphasis mine)

16. No accused of cognizable offence can stall registration of the FIR against him as the accused has got no right to object registration of FIR.

17. Coming to the request of Dr. L.P. Misra to issue some direction/order to restrain the arrest of the applicants during investigation as they are all Government servants and postmortem report also shows the cause of death as suicide, the said aspect of the matter is to be decided by the investigating officer.

18. In the light of the aforesaid discussions I do not find any merit in this application which is dismissed as being not maintainable.