
(2007) 02 AHC CK 0073
In the Allahabad High Court

Prem Shanker Tiwari

APPELLANT

Vs

State of U.P. and Bhagwat Singh

RESPONDENT

Date of Decision : 28-02-2007

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Criminal Procedure Code, 1973 (CrPC) — Section 154, 156, 161, 162, 173

Penal Code, 1860 (IPC) — Section 201, 302, 306

Citation : (2007) 4 ADJ 258

Hon'ble Judges : Poonam Srivastava, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Poonam Srivastava, J.—Heard learned Counsel for the petitioner and learned A.G.A. for the State.

2. The instant writ petition has been filed challenging the orders dated 23.1.2006 passed by the Judicial Magistrate I. Ballia in misc. case No. 4 of 2006, Prem Shanker Tiwari v. Ashok Kumar Tiwari and 8.2.2007 passed by the Special/ Additional Sessions Judge, court No. 7, Ballia.

3. The daughter of the petitioner married Ashok Kumar Tiwari according to the Hindu Rites on 14.5.2004. It is alleged that she was subjected to cruelty for non-fulfilment of demand of dowry in the shape of one fridge, Maruti car, and cash of Rs. 50,000/-. The demand of Rs. 50,000/- was fulfilled, however, other articles could not be given. When son of the petitioner went to his sister's house, he was informed that she died and last rites were performed. The petitioner was at Kolkata and he came back after receiving information about the death of his daughter, he tried to lodge a report but the request was declined. Therefore, an application u/s 156(3) Cr.P.C. was moved on 4.1.2006. An application was already given to the Superintendent of Police, Baillia. Copy of the application is annexed as annexure No. 1 to the writ petition. The police report was called for by the Magistrate. The S.H.O. of P.S. Sahatwar. District Ballia submitted a report

that the applicant's son Krishna Kumar Tiwari has already lodged First Information Report at case crime 149 of 2005 under Sections 302, 201 I.P.C. against one Bharat Tiwari. It appears that the case under Sections 302, 201 I.P.C. is being investigated by the police for an offence under Sections 306, 201 I.P.C. against one Bharat Tiwari, who is in custody. On perusal of this report, the Magistrate rejected the application u/s 156(3) Cr.P.C. declining to register second report and investigate the matter on the principles laid down by the Apex Court in the case of T.T. Antony Vs. State of Kerala and Others, It is stated in the order of the Magistrate that in view of the aforesaid decision of Hon'ble Supreme Court, two reports cannot be registered in respect of one and same occurrence. The order of the Magistrate was challenged in a criminal revision No. 24 of 2006.

4. Learned Counsel for the petitioner has placed reliance on another decision of the Apex Court Upkar Singh Vs. Ved Prakash and Others, The Apex Court analysed the principles laid down in the case of T.T. Antony (supra). For ready perusal, paragraph Nos. 15 and 16 of the case of Upkar Singh (supra) are quoted hereinbelow.

15. Having carefully gone through the above judgment. We do not think that this Court in the said cases of T.T. Antony v. State of Kerala and Ors. has precluded an aggrieved person from filing a counter case as in the present case. This is clear from the observations made by this Court in the above said case of T.T. Antony v. State of Kerala and Ors. In paragraph 27 of the judgment wherein while discussing the scope of Sections 154, 156, and 173(2) Cr.P.C., this is what the Court observed:

In our view a case of fresh investigation based on the second or successive FIRs, not being a counter case filed in connection with the same or connected cognizable offences alleged to have been committed in the course of the same transaction and in respect of which pursuant to the first FIR either investigation is under way or final report u/s 173(2) has been forwarded to the Magistrate, may be a fit case for exercise of power under Sections 482 Cr.P.C. or under Articles 226/227 of the Constitution.

[Emphasis supplied]

16. It is clear from the words emphasized hereinabove in the above quotation, this Court in the case of T.T. Antony v. State of Kerala and Ors. has not excluded the registration of a complaint in the nature of a counter case from the purview of the Code. In our opinion, this Court in that case only held any further complaint by the same complainant or others against the same accused, subsequent to the registration of a case, is prohibited under the Code because an investigation in this regard would have already started and further complaint against the same accused will amount an improvement on the facts mentioned in the original complaint, hence will be prohibited u/s 162 of the Code. This prohibition noticed by this Court, in our opinion does not apply to counter complaint by the accused in the 1st complaint or on his behalf alleging a different

version of the said incident.

5. The Apex Court, while interpreting law in the case of T.T. Antony deciding the case of Upkar Singh, placed reliance on another decision Kari Choudhary v. Mst. Sita Devi and Ors. 2001 ACC 689 (SC). The view expressed by Hon''ble Supreme Court is absolutely clear that the provision of the Code does not take away jurisdiction of the Magistrate u/s 156(3) Cr.P.C. even after submission of a report by the Investigating Officer to direct for registering a counter case in respect of the same occurrence. If the case of T.T. Antony was to be accepted as holding second complaint or counter case regarding the same incident to be prohibited then such a conclusion would lead to serious consequences. The Apex Court neither considered nor expressed its view regarding legal right of the aggrieved person to file a counter case in given fact of the circumstances, where First Information Report, first in time was lodged against some persons as a result of conspiracy to shield the actual offender. When application u/s 156(3) Cr.P.C. is moved before the Magistrate setting up a counter case, it is bounden duty of the Magistrate to examine the allegation and come to a conclusion instead of adopting a hyper-technical view that the jurisdiction to examine different version is completely lacking and hit by Sections 161 and 162 of the Code. Facts of the case of T.T. Antony was somewhat absolutely different and, therefore, it cannot be treated laying down a complete bar for institution of a rival version bringing to books the actual accused, who appears to be involved in the crime. Paragraph No. 19 of decision of Upkar Singh (supra) is quoted below:

19. This clearly shows that if concerned police refused to register a counter complaint, it is open to the Magistrate at any stage to direct the police to register the complaint brought to his notice and investigate the same.

6. In the instant case, no doubt F.I.R. is said to be lodged by the son of the petitioner but perusal of the application u/s 156(3) Cr.P.C., it transpires that it has been disputed that Krishna Kant Tiwari son of the petitioner has ever lodged any report. It has been denied by the petitioner that while passing the order, the Magistrate did not consider this aspect of the matter. The revisional court confirmed the said order as well. First Information Report was registered at the instance of so-called Krishna Kant Tiwari against accused Bharat Tiwari and Prabhawati Devi.

7. Perusal of the F.I.R. shows that it is only Bharat Tiwari, who has been arrayed as an accused, therefore, finding that the matter is being investigated by the police against Prabhawati Devi as well, is against the record. The police report submitted before the Magistrate do not show that the case is being investigated against Prabhawati Devi. Besides the aforesaid fact, it is evident that though daughter of the petitioner died within seven years of marriage and she was subjected to cruelty for non-fulfilment of demand of dowry and her death appears to be an unnatural one. Presumption against the accused, cannot be ruled out. The Superintendent of Police, Ballia has also not taken any notice of the application moved at the instance of the petitioner. The courts below were

liable to direct the police to register and investigate the matter against those accused, who are not named in the F.I.R. alleged to have been lodged by Krishna Kant Tiwari, son of the petitioner.

8. In the circumstances, order dated 23.1.2006 passed by the Judicial Magistrate I, Ballia confirmed in revision by the Special Additional Sessions Judge, court No. 7, Ballia, vide judgment and order dated 8.2.2007 refusing the petitioner to get the matter investigated on an application u/s 156(3) Cr.P.C. moved at the instance of the petitioner on 4.1.2006 is not sustainable in law. The impugned orders dated 23.1.2006 and 8.2.2007 are hereby quashed. The matter is remanded to the concerned Magistrate to pass afresh order after taking entire aspect into consideration, and giving an opportunity of hearing to the petitioner within a period of three weeks from the date a certified copy of this order is produced before him.

9. With the aforesaid direction, the writ petition is allowed.