
(1977) 05 AHC CK 0014
In the Allahabad High Court

Ram Krishna and Others

APPELLANT

Vs

Yunus and Others

RESPONDENT

Date of Decision : 18-05-1977

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 156, 190, 200, 202
Penal Code, 1860 (IPC) — Section 395

Citation : (1977) AWC 563 : (1978) CriLJ 52

Hon'ble Judges : S. Malik, J

Bench : Single Bench

Judgement

S. Malik, J.—This is a petition u/s 482 of the Cr.PC praying that the order dated 9-6-1976 of the Chief Judicial Magistrate, Farrukhabad, directing the police to investigate into the allegations made in the complaint u/s 156(3) of the Cr.PC and either to submit a charge-sheet or a final report, be quashed.

2. The relevant facts are that Yens, respondent No. 1 filed a complaint before the Magistrate concerned making allegations which make out an offence punishable u/s 395 of the IPC The learned Magistrate instead of proceeding with the case himself after taking cognizance thereof passed the impugned order u/s 156(3) of the Cr.PC directing the police to investigate it as already mentioned.

3. It was argued on behalf of the applicants that the learned Magistrate acted illegally as he had no option but to take cognizance of the case in view of the language of Section 190 of the Cr.PC In support of this view the attention of the Court, was drawn to the observations made by the Supreme Court in Shri A.C. Aggarwal, Sub-divisional Magistrate, Delhi and Another Vs. Mst. Ram Kali, etc., . The relevant observations are in para 12 wherein the Supreme Court has observed (at p. 86 of 1968 Cri LJ:?

From the copies of the reports made in these cases to the Magistrate by the police?made available to us at the hearing of these appeals?it is clear that they disclose offences u/s 3 against the respondents. Therefore, the question is whether the Magistrate can choose to Ignore the cognizable offence complained

of and merely have recourse to Section 18 and thus deprive the parties proceeded against of the benefit of a regular trial as well as the right of appeal in the event of their conviction. Bearing in mind the purpose of these provisions as well as the scheme of the Act and on a harmonious construction of the various provisions in the Act, we are of the opinion that in cases like those before us the Magistrate who is also a court as provided in Section 22 must at the first instance proceed against the persons complained against under the penal provisions in Section 3 or 7 as the case may be, and only after the disposal of those cases take action u/s 18 if there is occasion for it. u/s 190(1)(b) of the Cr.PC the Magistrate is bound to take cognizance of any cognizable offence brought to his notice.

4. The case before the Supreme Court was under Suppression of Immoral Traffic in Women & Girls Act, 1956 and while considering the facts of that case the Supreme Court was of the view that in case the Magistrate did not take cognizance of the complaint made before him by the police and instead proceeded under the said Act, it would result in injustice and in a stray sentence observed, "Under Section 190(1)(b) of the Cr.PC the Magistrate is bound to take cognizance of any cognizable offence brought to his notice." The observations were specifically made in respect of Section 190(1)(b) of the Cr.PC. The facts of the instant case are ; different. Here in the complaint, no doubt. respondent No. 1 has alleged that the applicants had committed a cognizable offence u/s 395 of the Indian Penal Code. From a perusal of the relevant provisions of the Cr. P, C. it is apparent that two courses were open to the Magistrate. He could either take cognizance of the case and proceed with it in accordance with law as laid down in Section 200 of the Cr.PC and onwards or direct the police to investigate the case u/s 156(3) of the Cr.PC and completely divest himself of the case. In the instant case, the learned Magistrate has chosen to direct the police to investigate the case u/s 156(3) of the Cr.PC. Keeping in view the observations made by the Supreme Court in *Gopal Das Sindhi v. State of Assam* AIR 1961 SC 986. A perusal of the judgment of the Supreme Court in *Gopal Das Sindhi v. State of Assam* (supra) will show that it is almost on all fours with the instant case.

5. It was argued by the learned counsel for the applicants that in view of the provisions of Section 202(1)(a) of the Cr.PC the Magistrate could not have ordered investigation by the police. This contention is obviously erroneous as in the instant case the Magistrate instead of proceeding with the case himself has taken recourse to Section 156(3) of the Cr.PC. Section 202(1)(b) of the Cr.PC would have come into play if the Magistrate had chosen to proceed with the case himself.

6. Under the circumstances, I see no force in this petition and reject it. The stay order is hereby vacated.