
(2007) 05 AHC CK 0080
In the Allahabad High Court

Ram Prasad Sharma and Others

APPELLANT

Vs

State of Uttar Pradesh

RESPONDENT

Date of Decision : 30-05-2007

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 156
Penal Code, 1860 (IPC) — Section 147, 149, 323, 427, 504

Citation : (2007) 05 AHC CK 0080

Hon'ble Judges : Vinod Prasad, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Vinod Prasad, J.—Heard learned Counsel for the applicant and learned AGA.

2. The applicant has challenged the proceedings of case No. 171 of 2002 Smt. Khem Kaur v. Ram Prasad under Sections 147 149 323 504 506 427 IPC pending before Judicial Magistrate Court No. 7, Mathura as well as summoning order dated 9.4.2004 passed in the aforesaid case.

3. Two contentions have been raised by the learned Counsel for the applicants. Both these submissions are dealt herein below in seriatim.

4. The first contention argued by the counsel for the applicant relates to the proposition that Magistrate suo motu converted the application u/s 156(3) Cr.P.C. into a complaint and then summoned the accused. According to him the said procedure adopted by the Magistrate is against the law laid down by this court as the Magistrate was statutory bound to direct for an investigation on an application u/s 156(3) Cr.P.C. if cognizable offence is disclosed thereby.

5. The said submission of learned Counsel for the applicant, in so far as accused is concerned does not hold good. Under the scheme of Code of Criminal Procedure the accused person has got a right of hearing at various stages of trial but at the stage of Section 156(3) Cr.P.C, under Chapter XII no such opportunity is provided to the accused. The said section does not contemplate any such right

of hearing to the accused. It has been held by the Apex Court in the case of State of Haryana v. Ch. Bhajan Lal 1992 SCC 426 vide para 29, 30 and 31 thereof and Superintendent Of Police, CBI and Ors. v. Tapan Kumar Singh 2003 (2) JIC 126 vide para 20 thereof. This aspect has been dealt with in detail in the case of Smt Masuman v. State of U.P. 2007 ALJ (1) 221. further it is for the accused to substantiate, by leading evidence, that the proceedings are tainted with malafides. His allegation of malafides cannot be accepted without being tested and verified and therefore no charge sheet can be quashed merely because there me-allegations of malafide.

6. Both the submissions raised by the learned Counsel for the applicant are therefore repelled. This application being meritless, it is hereby dismissed.