

(2018) 06 CHH CK 0111
In the Chhattisgarh High Court
Case No : Criminal Revision No. 494 Of 2017

Sanjay Modi And Ors

APPELLANT

Vs

Kamlesh Devi Dewda And Ors

RESPONDENT

Date of Decision : 22-06-2018

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 154, 156, 156(3), 190, 200, 202, 397
Constitution Of India, 1950 — Article 226

Citation : (2018) 06 CHH CK 0111

Hon'ble Judges : Arvind Singh Chandel, J

Bench : Single Bench

Advocate : Manoj Paranjpe, Chandresh Shrivastava

Final Decision : Allowed

Judgement

Arvind Singh Chandel, J

1. This revision has been preferred against the order dated 29.4.2017 passed by the Additional Sessions Judge/Special Judge under the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, Korba in Criminal Revision No.61 of 2016 arising out of the order dated 28.5.2016 passed by the Chief Judicial Magistrate, Korba, by which the Chief Judicial Magistrate has rejected the application filed by Respondent No.1/Complainant Kamlesh Devi Dewda under Section 156(3) of the Cr.P.C. Vide the impugned order dated 29.4.2017, the Additional Sessions Judge has remanded the matter to the Chief Judicial Magistrate, Korba.

2. Facts of the case, in brief, are that Respondent No.1/Complainant Kamlesh Devi Dewda is the tenant in the premises of the Applicants and a decree of eviction dated 24.12.2014 had been passed against the husband of Respondent No.1/Complainant on the ground of construction without permission, arrears of rent and creation of nuisance. Against the said decree of eviction, an appeal has been filed by the husband of the Complainant which is pending in this Court.

Respondent No.2 Om Prakash Yadav, Respondent No.3 Ramayan Yadav and Respondent No.4 Dilip Das are workers of Applicant No.3 Ashok Modi. Applicant No.1 Sanjay Modi and Applicant No.4 Raja Modi are brothers of Applicant No.3 Ashok Modi. Applicant No.2 Gaurav Modi is son of Applicant No.3 Ashok Modi.

3. Respondent No.1/Complainant filed an application under Section 156(3) of the Cr.P.C. before the Chief Judicial Magistrate, Korba for a direction to the police to register a First Information Report and investigate into the matter and thereafter to file a charge-sheet against all the Applicants and Respondents No.2 to 4 on the allegations inter alia that a dispute in respect of a residential house is pending before the High Court between the husband of the Complainant and Applicant No.3 Ashok Modi. In the application under Section 156(3) of the Cr.P.C., it is alleged that on 12.3.2016, Respondents No.2 to 4 were cutting a mango tree standing on the land of Applicant No.3 Ashok Modi, which is adjacent to the residential house of the Complainant. It is further alleged that on 13.3.2016 at about 10:30 a.m. to 11:00 a.m., Respondents No.2 to 4 crossed the boundary wall and reached to the roof of the house of the Complainant. When she told them that they were supposed to enter her house with due permission, Applicant No.2 Gaurav Modi reached the spot and used abusive language and threatened the Complainant. Applicant No.1 Sanjay Modi also shouted and used abusive language. On 13.3.2016 itself, the Complainant reported the matter to the police, but no action was taken.

4. Vide order dated 28.5.2016, the Chief Judicial Magistrate, Korba, rejected the application under Section 156(3) of the Cr.P.C. on the ground that no document pertaining to the earlier complaint alleged to have been filed by Applicant No.3 Ashok Modi was filed nor was any other document filed along with the application. It was also held that the matter pertaining to the house is pending before the High Court, but no such document was filed and even no document to substantiate the allegations made in the application was filed. It was further held that in absence of a cogent proof of commission of the alleged offence, an FIR cannot be registered.

5. Being aggrieved by the order of rejection dated 28.5.2016, Respondent No.1/Complainant filed a revision before the Court of Session. Vide the impugned order dated 29.4.2017, the Additional Sessions Judge allowed the revision and set aside the order dated 28.5.2016 passed by the Chief Judicial Magistrate and remanded the matter back to the Chief Judicial Magistrate for reconsideration on the application filed by the Complainant under Section 156(3) of the Cr.P.C. Hence, this revision.

6. Shri Manoj Paranjpe, Learned Counsel appearing for the Applicants submits that the order passed by the Additional Sessions Judge is illegal and arbitrary. Since the order of the Chief Judicial Magistrate was an interlocutory order, no revision lies before the Additional Sessions Judge under Section 397 of the Cr.P.C. The Additional Sessions Judge ought to have appreciated that the dismissal of the complaint by the Chief Judicial Magistrate amounts to acquittal

and as such the order of dismissal of the complaint was not revisable. It is further submitted that there are 3 cases pending against the husband and son of the Complainant which are instituted at the instance of the employees of Applicant No.3. By the order of the Court, First Information Report has also been registered against the husband and son of the Complainant. The husband of the Complainant is a habitual offender. It is further submitted that earlier also husband of the Complainant had filed a complaint which was rejected by the Chief Judicial Magistrate, Korba on 4.6.2014. Therefore, the present complaint under Section 156(3) of the Cr.P.C. has been filed by the Complainant with ulterior motive and just to harass the Applicants. The Additional Sessions Judge has failed to appreciate that the Chief Judicial Magistrate while passing the order had considered the materials available and allegations levelled against the Applicants and it was found that the complaint was frivolous and was just for creating pressure on the Applicants for compromise in the appeal filed by the husband of the Complainant before this Court. The Magistrate has power to reject the application filed under Section 156(3) of the Cr.P.C. at the initial stage if, prima facie, no offence is made out or if it appears that the Complainant has filed the complaint just to harass and create pressure on the other side. Reliance has been placed on (2011) 3 SCC 496 (Mona Panwar v. High Court of Judicature of Allahabad), (2015) 6 SCC 287 (Priyanka Srivastava v. State of Uttar Pradesh) and (2007) 12 SCC 641 (Dilawar Singh v. State of Delhi).

7. Shri Chandresh Shrivastava, Learned Counsel appearing for Respondent No.1/ Complainant has supported the impugned order passed by the Additional Sessions Judge and submitted that when an application/complaint under Section 156(3) of the Cr.P.C. is filed, the Magistrate has only two options available, (i) to pass an order as contemplated by Section 156(3) of the Cr.P.C. and (ii) to direct examination of the Complainant upon oath and the witnesses present, if any as mentioned in Section 200 of the Cr.P.C. and proceed further with the matter as provided by Section 202 of the Cr.P.C. Thus, the order passed by the Chief Judicial Magistrate is not in accordance with law. Therefore, the Additional Sessions Judge has rightly remanded the matter back to the Chief Judicial Magistrate for reconsideration. Reliance has been placed on AIR 2010 SC 1877 (Rameshbhai Pandurao Hedau v. State of Gujarat).

8. I have heard Learned Counsel appearing for the parties and perused the entire material available with due care.

9. In order to appreciate the rival contentions, relevant provisions of the Code of Criminal Procedure need to be referred to. Section 156 of the Code of Criminal Procedure deals with police officer's power to investigate cognizable case, which runs thus:

"156. Police officer's power to investigate cognizable case.-(1) Any officer in charge of a police station may, without the order of a Magistrate, investigate any cognizable case which a Court having jurisdiction over the local area within the limits of such station would have power to inquire into or try under the provisions

of Chapter XIII.

(2) No proceeding of a police officer in any such case shall at any stage be called in question on the ground that the case was one which such officer was not empowered under this section to investigate.

(3) Any Magistrate empowered under section 190 may order such an investigation as above-mentioned."

10. Section 190 of the Code of Criminal Procedure reads as under:

"190. Cognizance of offences by Magistrates.- (1) Subject to the provisions of this Chapter, any Magistrate of the first class, and any Magistrate of the second class specially empowered in this behalf under sub-section (2), may take cognizance of any offence--

(a) upon receiving a complaint of facts which constitute such offence;

(b) upon a police report of such facts;

(c) upon information received from any person other than a police officer, or upon his own knowledge, that such offence has been committed.

(2) The Chief Judicial Magistrate may empower any Magistrate of the second class to take cognizance under sub-section (1) of such offences as are within his competence to inquire into or try."

11. Chapter XV of the Code of Criminal Procedure deals with complaints to Magistrates. It has four sections from Section 200 to Section 203, which run thus:

"200. Examination of complainant.--A Magistrate taking cognizance of an offence on complaint shall examine upon oath the complainant and the witnesses present, if any, and the substance of such examination shall be reduced to writing and shall be signed by the complainant and the witnesses, and also by the Magistrate:

Provided that, when the complaint is made in writing, the Magistrate need not examine the complainant and the witnesses-

(a) if a public servant acting or purporting to act in the discharge of his official duties or a Court has made the complaint; or

(b) if the Magistrate makes over the case for inquiry or trial to another Magistrate under section 192:

Provided further that if the Magistrate makes over the case to another Magistrate under section 192 after examining the complainant and the witnesses, the latter Magistrate need not re-examine them.

201. Procedure by Magistrate not competent to take cognizance of the case.-If the complaint is made to a Magistrate who is not competent to take cognizance of the offence, he shall,--

(a) if the complaint is in writing, return it for presentation to the proper Court with an endorsement to that effect;

(b) if the complaint is not in writing, direct the complainant to the proper Court.

202. Postponement of issue of process.--(1) Any Magistrate, on receipt of a complaint of an offence or which he is authorised to take cognizance of which has been made over to him under section 192, may, if he thinks fit, and shall, in a case where the accused is residing at a place beyond the area in which he exercises his jurisdiction postpone the issue of process against the accused, and either inquire into the case himself or direct an investigation to be made by a police officer or by such other person as he thinks fit, for the purpose of deciding whether or not there is sufficient ground for proceeding:

Provided that no such direction for investigation shall be made--

(a) where it appears to the Magistrate that the offence complained of is triable exclusively by the Court of Sessions; or

(b) where the complaint has not been made by a Court, unless the complainant and the witnesses present (if any) have been examined on oath under section 200.

(2) In an inquiry under sub-section (1), the Magistrate may, if he thinks fit, take evidence of witness on oath;

Provided that if it appears to the Magistrate that the offence complained of is triable exclusively by the Court of Session, he shall call upon the complainant to produce all his witnesses and examine them on oath. (3) If an investigation under sub-section (1) is made by a person not being a police officer, he shall have for that investigation all the powers conferred by this Code on an officer in charge of a police station except the power to arrest without warrant.

203. Dismissal of complaint.--If, after considering the statements on oath (if any) of the complainant and of the witnesses and the result of the inquiry or investigation (if any) under section 202, the Magistrate is of opinion that there is no sufficient ground for proceeding, he shall dismiss the complaint, and in every such case he shall briefly record his reasons for so doing."

12. In the instant case, there is no dispute that the Complainant is the tenant in the premises of the Applicants and a decree of eviction had already been passed against the husband of the Complainant and an appeal has been filed against the said decree which is pending before this Court. There is also no dispute on the point that all the Applicants are family members of Applicant No.3 Ashok Modi and Respondents No.2 to 4 are the employees of Applicant No.3. From a minute perusal of the entire material available, it is also clear that some other criminal cases are also pending against the husband and son of the Complainant, which are instituted at the instance of the employees of Applicant No.3.

13. Vide the order dated 28.5.2016, the Chief Judicial Magistrate has rejected

the application under Section 156(3) of the Cr.P.C. on the ground that a dispute of civil nature exists between both the parties and no document had been filed regarding the previous litigation. The Additional Sessions Judge has allowed the revision and set aside the order of the Chief Judicial Magistrate and remanded the matter back to decide the matter afresh in accordance with law. While deciding the revision, the Additional Sessions Judge has also observed that after filing the application under Section 156(3) of the Cr.P.C. the Magistrate has only two options available, namely, (i) to pass an order as contemplated by Section 156(3) of the Cr.P.C. and (ii) to direct examination of the Complainant upon oath and her witnesses, if any as mentioned in Section 200 of the Cr.P.C. and proceed further with the matter as provided by Section 202 of the Cr.P.C.

14. In Dilawar Singh case (supra), it was held by the Supreme Court thus:

"18. "11. The clear position therefore is that any Judicial Magistrate, before taking cognizance of the offence, can order investigation under Section 156(3) of the Code. If he does so, he is not to examine the complainant on oath because he was not taking cognizance of any offence therein. For the purpose of enabling the police to start investigation it is open to the Magistrate to direct the police to register an FIR. There is nothing illegal in doing so. After all registration of an FIR involves only the process of entering the substance of the information relating to the commission of the cognizable offence in a book kept by the officer in charge of the police station as indicated in Section 154 of the Code. Even if a Magistrate does not say in so many words while directing investigation under Section 156(3) of the Code that an FIR should be registered, it is the duty of the officer in charge of the police station to register the FIR regarding the cognizable offence disclosed by the complainant because that police officer could take further steps contemplated in Chapter XII of the Code only thereafter."

15. In Priyanka Srivastava case (supra), it was held by the Supreme Court as under:

"27. Regard being had to the aforesaid enunciation of law, it needs to be reiterated that the learned Magistrate has to remain vigilant with regard to the allegations made and the nature of allegations and not to issue directions without proper application of mind. He has also to bear in mind that sending the matter would be conducive to justice and then he may pass the requisite order. The present is a case where the accused persons are serving in high positions in the Bank. We are absolutely conscious that the position does not matter, for nobody is above the law. But, the learned Magistrate should take note of the allegations in entirety, the date of incident and whether any cognizable case is remotely made out. It is also to be noted that when a borrower of the financial institution covered under the SARFAESI Act, invokes the jurisdiction under Section 156(3) CrPC and also there is a separate procedure under the Recovery of Debts Due to Banks and Financial Institutions Act, 1993, an attitude of more care, caution and circumspection has to be adhered to.

30. In our considered opinion, a stage has come in this country where Section 156(3) CrPC applications are to be supported by an affidavit duly sworn by the applicant who seeks the invocation of the jurisdiction of the Magistrate. That apart, in an appropriate case, the learned Magistrate would be well advised to verify the truth and also can verify the veracity of the allegations. This affidavit can make the applicant more responsible. We are compelled to say so as such kind of applications are being filed in a routine manner without taking any responsibility whatsoever only to harass certain persons. That apart, it becomes more disturbing and alarming when one tries to pick up people who are passing orders under a statutory provision which can be challenged under the framework of the said Act or under Article 226 of the Constitution of India. But it cannot be done to take undue advantage in a criminal court as if somebody is determined to settle the scores."

16. In the light of above, if I examine the facts of the present case, I find that there was a civil dispute between the parties. A decree for eviction of the house was already passed against the husband of the Complainant. Some criminal cases were also registered against the husband and son of the Complainant at the instance of the employees of Applicant No.3. In the said background, the present application under Section 156(3) of the Cr.P.C. has been filed by the Complainant before the Chief Judicial Magistrate. While passing the order dated 28.5.2016, the Chief Judicial Magistrate has duly examined the facts and evidence available and after verifying the truth and veracity of the allegations has rightly rejected the application under Section 156(3) of the Cr.P.C. The order of the Chief Judicial Magistrate is a well reasoned order. Vide the impugned order dated 29.4.2017, the Additional Sessions Judge has allowed the revision before it and rejected the order of the Chief Judicial Magistrate and opined that the Magistrate is left with only two options while deciding the application preferred under Section 156(3) of the Cr.P.C.; first, the Magistrate is required to send the application for registration of an FIR and investigation into the matter by police and secondly, the Magistrate is to proceed as prescribed under Sections 200 and 202 of the Cr.P.C. But, in Priyanka Srivastava case (supra), it has been observed by the Supreme Court that the Magistrate has to remain vigilant with regard to the allegations made and the nature of allegations and not to issue directions without proper application of mind. He has also to bear in mind that sending the matter would be conducive to justice and then he may pass the requisite order. It was further observed that in an appropriate case, the Magistrate would be well advised to verify the truth and also can verify the veracity of the allegations. In the instant case, from the order dated 28.5.2016, it reveals that the Chief Judicial Magistrate, while passing the order, has remained vigilant with regard to the allegations made and the nature of allegations. The order of the Magistrate also discloses that there has been proper application of his mind. He appears to have verified the truth and the veracity of the allegations. In my considered opinion, the application of the Complainant under Section 156(3) of the Cr.P.C. has rightly been rejected by the Magistrate. Therefore, the impugned order dated

29.4.2017 passed by the Additional Sessions Judge setting aside the order dated 28.5.2016 passed by the Chief Judicial Magistrate and remanding the matter back to the Magistrate is not in accordance with law.

17. As regards maintainability of the revision before the Additional Sessions Judge, it was argued on behalf of the Applicants that since the order of the Chief Judicial Magistrate is an interlocutory order, no revision lies before the Additional Sessions Judge under Section 397 of the Cr.P.C.

18. In AIR 2014 Allahabad 214 (Lucknow Bench) (Jagannath Verma v. State of U.P.), it was held that an order of Magistrate rejecting an application under Section 156(3) of the Cr.P.C. for registration of a case by the police and for investigation into the matter is not an interlocutory order. Such an order is amenable to the remedy of a criminal revision under Section 397 of the Cr.P.C. In the instant case, the Additional Sessions Judge has also rightly relied on the above judgment of the Allahabad High Court. In the light of above, it is clear that a revision under Section 397 of the Cr.P.C. against the order of rejection passed by a Judicial Magistrate is tenable before the Court of Session.

19. Therefore, the impugned order dated 29.4.2017 passed by the Revisional Court, i.e., the Additional Sessions Judge is set aside and the order dated 28.5.2016 passed by the Chief Judicial Magistrate is affirmed.

20. Consequently, the instant revision is allowed in the aforesaid terms.

21. Record of the Court below be sent back along with a copy of this order forthwith for information and necessary compliance.