
(2005) 08 AHC CK 0076

In the Allahabad High Court

Case No : Criminal Misc. Application No. 5872 of 1999

Sant Kumar, Smt. Uma Devi, Balendra and Gyanendra

APPELLANT

Vs

State of U.P. and Mukesh Singh

RESPONDENT

Date of Decision : 04-08-2005

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 156(3), 200, 202, 205, 245
Penal Code, 1860 (IPC) — Section 307, 323, 336, 452, 504

Citation : (2005) 08 AHC CK 0076

Hon'ble Judges : Poonam Srivastava, J

Bench : Single Bench

Advocate : Rajiv Gupta and Dilip Kumar, for the Appellant; K.M. Mishra and A.G.A., for the Respondent

Judgement

Poonam Srivastava, J.—Heard learned counsel for the applicants and learned A.G.A. for the State.

2. The proceedings in Complaint case No. 192 of 1998, Mukesh v. Sant Kumar pending in the court of 3rd Additional Chief Judicial Magistrate, Etawah initiated on the basis of an application filed u/s 156(3) Cr.P.C. at the instance of the opposite party no. 2 is sought to be quashed. The opposite party no. 2 Mukesh Singh is an accused in case Crime No. 58 of 1998, under Sections 452, 54, 506, 336 I.P.C. Police Station Badpura, District Etawah which was registered on 16.7.1998. A charge sheet has been filed against him and he is facing trial in the said case. The submission of the counsel for the applicants is that the instant application u/s 156(3) Cr.P.C. was filed by Mukesh Singh, opposite party no. 2, who was in jail in connection with case Crime No. 58 of 1998 and a counterblast after he was released from jail, the present criminal proceedings were instituted against the applicants. The applicant no. 1 is employed as an Assistant no. 2 Smt. Uma Devi is the wife of applicant no. 1 and is employed as Multi Purpose Worker in the Medical Department in Madhya Pradesh. The applicant nos. 3 and 4 are sons of the applicant nos. 1 and 2. the applicant no. 4 Gyanendra was

student of B.Sc. Part I of Jain Degree College, Bhind. The submissions on behalf of the applicants are many folds. The first argument that the application u/s 156(3) Cr.P.C. was treated straight-way as complaint and the learned Magistrate started taking statements under Sections 200 and 202 Cr.P.C., this could not be done in view of the various decisions of this Court. The second arguments is that the allegation against the applicants was u/s 307 I.P.C., in the circumstances, the learned Magistrate was bound to record the statements of all the witnesses. Several dates were fixed but the witnesses did not turn and therefore, in absence of the witnesses the applicants were summoned under Sections 323, 452, 504, 506 I.P.C. The next argument that the proceedings initiated on the basis of an application u/s 156(3) Cr.P.C. was only a counterblast. Lastly counsel for the applicants has submitted that on 13.11.1998 the Magistrate has passed an order fixing 5.12.1998 for the statements under Sections 200 and 202 Cr.P.C. but despite the said order, the witnesses were not produced and finally the applicants were summoned without there being any evidence against them. The applicants instituted criminal revision No. 280 of 1999 which was dismissed vide judgment and order dated 15.10.1999. The first argument that the application u/s 156(3) Cr.P.C. has been straightway treated as a complaint is based on several decisions of this Court. *Surya Nath Yadav v. State of U.P. and Ors.*, 2003 A.C.C., 997. *Dinesh Chand and Ors. v. State of U.P.*, 2000 (41) A.C.C. 831 where it was held that the Chief Judicial Magistrate exceeded the jurisdiction in registering the application u/s 156(3) Cr.P.C. as a complaint. Powers u/s 156(3) Cr.P.C. are quite different from Section 200 Cr.P.C. and, therefore, the proceedings were quashed. However, the learned A.G.A. has cited a decision of the Apex Court in the case of *Joseph Mathuri and Anr. v. Swami Sachchidanand Hari Saskshi and Anr.*, 2001 (Suppl.) A.C.C. 951. In the said case, the Apex Court has set aside the decision of the Allahabad High Court and allowed the appeal where the order of the Judicial Magistrate, Dehradun was quashed for the reason that the High Court had held that an application u/s 156(3) Cr.P.C. can not be treated as a complaint. The Apex court said that this view was totally erroneous and order of the High Court said that this view was totally erroneous and order of the High Court can not be sustained in the eye of law. In the circumstances, the argument based on the decisions of Allahabad High Court can not be accepted in view of the ruling of the Apex Court. However, the order arguments that the proceedings are liable to be quashed for the reason that it is counterblast and no witness appeared to support the allegation u/s 307 I.P.C. and in absence of the witnesses, the Magistrate issued the summoning order under Sections 323, 452, 504, 506 I.P.C.

3. I have gone through the entire record. Assuming the argument that it is only a counterblast to be correct, yet the proceedings can not be quashed in exercise of inherent jurisdiction for the reason that prima facie bare reading of the complaint makes out allegation against the applicants and, therefore, the complaint can not be quashed the very inception. The summoning order was challenged in revision and the revisional court has recorded a categorical finding and arguments advanced on behalf of the applicants that Mukesh Singh, complainant is an

accused and was charge sheeted in respect of first information report which was registered at the instance of the applicants and therefore, the application u/s 156(3) Cr.P.C. was filed on 23.7.1998 in respect of an occurrence alleged to have taken place on 15.7.1998 without there being any injury report on record whatsoever. However, this Court can not assume the role of trial court and entertain argument on ground of malafide which is an exclusive jurisdiction of the trial court and this argument is always open for the applicants at the stage of Section 245 Cr.P.C. On reading of entire record, does not warrant quashing of the case in exercise of inherent jurisdiction. In the circumstances, I am not inclined to interfere in the application and is accordingly rejected.

4. However, in case the applicants appear within 15 days from today and move an exemption application u/s 205/317 Cr.P.C. (as the case may be) personal appearance of the applicants shall not be compelled. The applicants are permitted to appear through counsel and claim discharge at the appropriate stage, and the courts below shall decide the said application, in accordance with law, after affording opportunity of hearing to the parties, by a reasoned order.

5. The court shall take an undertaking from the applicants that they will appear on such dates if the court requires their presence on any date for recording evidence etc. during the trial. No coercive measures shall be taken against them, till the application for discharge is finally decided.