
(1992) 04 AHC CK 0112
In the Allahabad High Court
Case No : Criminal Revision No. 575 of 1992

Seraj Aslam and Others

APPELLANT

Vs

State of Uttar Pradesh and Others

RESPONDENT

Date of Decision : 20-04-1992

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 145, 154, 156(3)
Penal Code, 1860 (IPC) — Section 147, 148, 149, 301, 302

Citation : (1992) 34 ACR 249

Hon'ble Judges : B.P.Singh, J

Bench : Single Bench

Advocate : A.K. Awasthi and V.C. Tiwari, for the Respondent

Judgement

B.P. Singh, J.—This is an application for revision against the order dated 21st March, 1992, passed by Chief Judicial Magistrate, Varanasi in Criminal Seraj Aslam and Ors. v. Police Officers and Ors. Case No. nil of 1991,

2. Seraj Aslam and others, the Applicants, are Muslim residents of Varanasi City. Their case is that on 8th November, 1991 some disturbance had taken place in Varanasi City as a result of which curfew was imposed. An FIR Under Sections 147/148/149/302/301/324/323/326 IPC was lodged in Police Station Dasaswamedh and Crime No. 194/91 was registered. There after the Police went into action in the Muslim populated areas and made a number of indiscriminate arrest of Doctors, old and infirm persons, minor boys and others from their houses. A number of persons received injuries and two of them Dr. Anis and Taimoor died as a result of atrocities committed upon them. The Applicants went to lodge reports regarding the various acts of violation committed by the Police personnel in the Police Stations but their reports were not lodged by the Station Officers concerned. Having failed in their attempts to lodge the FIR against Police personnel, the Applicants sent applications by registered post to Senior Superintendent of Police, Varanasi. The Senior Superintendent of Police also did not take any action.

3. Thereafter, the Applicants moved an application before the Chief Judicial Magistrate, Varanasi u/s 156(3) of the Code of Criminal Procedure with the prayer that since the Applicants had exhausted all the remedies available to them under the law, the Police Officers concerned may be directed to investigate into the allegations which were made by the Applicants in their applications to the Senior Superintendent of Police, Varanasi

4. The learned Chief Judicial Magistrate passed the following order upon the application:--

Suna Gaya. Mere rai me Prathigan yadi koi mukadma kayam karna chatey hai to sambandhit thane me FIR darg karaye aatev prathna ko kharig kiya jata hai.

5. Aggrieved by the above order, the Applicants have come in revision.

6. I have heard the learned Counsel for the Applicants and the learned A.G.A. and this application is being disposed of finally at the admission stage.

7. Section 154 of the Code of Criminal Procedure runs as follows:--

154. Information in cognizable cases.--(1) Every information relating to the commission of a cognizable offence, if given orally to an officer in charge of a police station, shall be reduce to writing by him or under his direction, and be read over to the informant; and every such information, whether given in writing or reduced to writing as aforesaid, shall be given by the person giving it, and the substance thereof shall be entered in a book to be kept by such officer in such form as the State Government may prescribe in this behalf.

8. In view of the provisions of Section 154(1) of the Code, information of a cognizable offence has to be given to the officer in charge of a police station within whose jurisdiction the offence or the offences are said to have been committed. In case the information is oral, the officer in charge of the police station shall reduce the same to writing. The oral information may be reduced to writing either by the Station Officer or under his direction. Thereafter, the information is to be read over to the informant and has to be signed by the person giving the information. The provisions of Section 154(1) of the Code are mandatory and the officer in charge of the police station is bound to record the information in the book which is kept at the police station for this purpose. Of course, the officer in charge is not bound to record the information if the said information is either vague or it originates from a person, who is not an eye-witness or it is a cryptic telegram or telephonic message and the identity of the informant is not certain or the information does not disclose a cognizable offence. But if the information does disclose the commission of a cognizable offence, the officer in charge of the police station has no option but to record the information. In case the officer in charge of the police station refuses to record the information regarding the cognizable offence, the aggrieved party can send the substance of such information in writing by post to the Superintendent of Police concerned, who, if satisfied that such information discloses the commission

of cognizable offence, shall either investigate the case himself or direct the investigation to be made by any Police Officer subordinate to him.

9. In the present case, neither the officers in charge of the various Police Stations of Varanasi have complied with the mandatory provisions of Section 154 nor the Senior Superintendent of Police, Varanasi has performed his part of the duty when the substance of the information was sent to him through registered post by the Applicants. It is one of the main functions of the Police to register the case if the information is in writing and the information discloses the commission of cognizable offence. For reasons best known to them, neither the Station Officers of the various Police Stations nor the Senior Superintendent of Police, Varanasi thought it proper to take any action in the matter. The Applicants had no option but to approach the Chief Judicial Magistrate, who, u/s 156(3) of the Code, has been empowered to order an investigation in a cognizable offence. When an application, which discloses cognizable offence or offences, is moved before the Chief Judicial Magistrate, two courses are open to him. Firstly, he can send the application to the Police Station concerned with the direction to register the case and investigate the same and secondly he can proceed to take action in exercise of powers detailed in Chapter XV of the Code.

10. The power u/s 156(3) of the Code is to be exercised judicially. In case the Chief Judicial Magistrate thinks that there is no reason to order any investigation on the facts which are alleged in an application although the facts alleged disclose a cognizable offence, he is bound to give reasons for his conclusion. He is not supposed to pass just a cryptic and non-speaking order that he was of the view that the Applicants were free to lodge complaint if they so desired. The order, in the present case, does not give any reason which persuaded the Chief Judicial Magistrate, Varanasi, not to direct the Police Officers concerned to register the case on the basis of the application of the Applicants.

11. In this view of the matter, the order of the learned Chief Judicial Magistrate, Varanasi, dated 21st March, 1992 cannot be upheld. The application for revision is allowed. The order of the learned Chief Judicial Magistrate Varanasi, upon the application of the Applicants is hereby set aside. The learned Chief Judicial Magistrate is directed to re-hear the counsel for the Applicants and dispose of the application of the Applicants by a detailed order in which reasons for his conclusion are to be mentioned.