
(2008) 03 AHC CK 0011

In the Allahabad High Court

Case No : Criminal Miscellaneous Application No. 3112 of 2008

Shakila Bano and Others

APPELLANT

Vs

State of U.P. and Another

RESPONDENT

Date of Decision : 05-03-2008

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 2(d), 200(a)
Penal Code, 1860 (IPC) — Section 323, 504

Citation : (2008) 27 CriminalCC 191

Hon'ble Judges : Amar Saran, J

Bench : Single Bench

Advocate : S.K. Dubey, for the Appellant;

Final Decision : Allowed

Judgement

Amar Saran, J.—Heard learned Counsel for the applicants and the learned AGA.

2. Learned AGA concedes that no useful purpose would be served in issuing notice to the opposite party No.2, as it would only lead to delay of disposal of this application and prays that the application may be decided at this state after hearing learned Counsel for the applicants and State.

3. An order dated 02.07.2007 taking cognizance has been challenged in this case and it is argued that charge sheet has only been submitted under sections 323, 504 IPC. Reliance has been placed on the Explanation to section 2(d) of Code of Criminal Procedure, which reads as follows:-

"Explanation - A report made by a police officer in a case which discloses, after investigation, the commission of a non-cognizable offence shall be deemed to be a complaint; and the police officer by whom such report is made shall be deemed to be the complaint."

4. Therefore, on the basis of aforesaid Explanation, which has been interpreted in a Single Judge decision of this Court in *Dr.Rakesh Kumar Sharma v. State of U.P.*

and another 2007(59) ACC 998, it has been held that when the charge-sheet is only of non-cognizable offences, in view of the aforesaid provision, the charge-sheet should be treated as a complaint. The argument is well founded and the order taking cognizance is set aside. Now the Magistrate may pass an order taking cognizance if, he so chooses, by proceeding in this matter as a complaint case under Chapter XV of the Code of Criminal Procedure. He can also keep this fact in mind that in view of Proviso (a) to section 200 Cr.P.C., which reads as follows:

"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 discharge of his official duties or a Court has made the complaint;"

That is if the complainant who gives the information in writing is a public servant, who is acting in discharge of its official duties, it may not be necessary to examine the complainant and the witnesses and the Magistrate may pass an order u/s 190 (1)(a) of the Code of Criminal Procedure taking cognizance of the case instead of section 190 (1)(b) C.P.C."

5. The Magistrate shall pass appropriate order within fifteen days from the date of receipt of a certified copy of this order.

The aforesaid view has been taken by this Court in *Awadhesh Kumar and others v. State of U.P.* and another 2008(61) ACC 54.

With these observations, this application is allowed.