

(2011) 02 AHC CK 0054

In the Allahabad High Court

Case No : Criminal Miscellaneous Case No. 525 of 2011

Shanti Devi

APPELLANT

Vs

State of U.P.

RESPONDENT

Date of Decision : 25-02-2011

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 156(3), 193, 200, 202, 202(2)

Citation : (2011) 3 ADJ 375 : (2011) 8 RCR(Criminal) 2236

Hon'ble Judges : Narayan Shukla, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Shri Narayan Shukla, J.—Heard Mr. Murli Manohar Srivastava, learned Counsel for the Petitioner as well as Mr. Rajendra Kumar Dwivedi, learned Additional Government Advocate for the State.

2. The Petitioner has challenged the order dated 18th of May, 2010, passed by the Additional Chief Judicial Magistrate-V, Court No. 29, Lucknow on Misc. Application No. 58 of 2010, moved u/s 156(3) of the Code of Criminal Procedure, on the ground that the learned Magistrate has wrongly converted the application into complaint as the provisions of Section 156(3) of the Code of Criminal Procedure as well as provisions of Chapter 15 of the Code of Criminal Procedure have no co-relationship to each other, they are different and distinct provisions absolutely providing a different procedure. In support of his submission he placed reliance upon several decisions of this Court as well as the Hon'ble Supreme Court, which are referred to hereunder:

(1) Dharmeshbhai Vasudevbbhai and Others Vs. State of Gujarat and Others,

(2) Chandrika Singh v. State of U.P. and Ors. 2007 (3) JIC 746 (All).

(3) Superintendent of Police, C.B.I. and Ors. v. Tapan Kumar Singh 2003(2) JIG 126 (SC).

(4) Smt. Santosh Kumari v. State of U.P. 2007 (2) JIC 351 (All).

3. On the other hand Mr. Rajendra Kumar Dwivedi, learned Additional Government Advocate, appearing on behalf of the State, in support of his argument, has cited the following decisions:

(1) Rajendra Singh v. State of U.P. and Ors. LXXI 2010 ACC 446.

(2) Sukhwasi son of Hulas v. State of Uttar Pradesh LIX 2007 ACC 739 (DB)(All).

(3) Joseph Mathuri alias Vishveshwarananda and Anr. v. Swami Sachidanand Harisakshi and Anr. 2001 ACC 957 (SC).

(4) Smt. Mona Panwar v. The Hon'ble High Court of Judicature at Allahabad and Ors. Criminal Appeal No. 298 of 2011, decided on February 02, 2011,

4. The controversy raised in the matter has already been settled by the Hon'ble Supreme Court recently in the case of Rameshbhai Pandurao Hedau Vs. State of Gujarat, in which the Hon'ble Supreme Court has expressed the opinion as under:

25 The power to direct an investigation to the police authorities is available to the Magistrate both u/s 156(3) Code of Criminal Procedure and u/s 202 Code of Criminal Procedure. The only difference is the stage at which the said powers may be invoked. As indicated hereinbefore, the power u/s 156(3) Code of Criminal Procedure to direct an investigation by the police authorities is at the pre-cognizance stage while the power to direct a similar investigation u/s 202 is at the post-cognizance stage.

26. The learned Magistrate has chosen to adopt the latter course and has treated the protest petition filed by the Appellant as a complaint u/s 200 of the Code and has thereafter proceeded u/s 202 Code of Criminal Procedure and kept the matter with himself for an inquiry in the facts of the case. There is nothing irregular in the manner in which the learned Magistrate has proceeded and if at the stage of Sub-section (2) of Section 202 the learned Magistrate deems it fit, he may either dismiss the complaint u/s 203 or proceed in terms of Section 193 and commit the case to the Court of Session.

5. In the light of the aforesaid observations, I am of the view that the learned Magistrate has not committed any error in taking cognizance in the matter and proceeding for enquiry. Therefore, the petition is dismissed.