
(2014) 08 AHC CK 0283
In the Allahabad High Court
Case No : Criminal Revision No. 2062 of 2014

Shiv Dulari

APPELLANT

Vs

State of U.P.

RESPONDENT

Date of Decision : 13-08-2014

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 124, 154, 156, 156(3), 157
Penal Code, 1860 (IPC) — Section 498A

Citation : (2015) 1 ACR 103 : (2014) 6 ALJ 188 : (2015) 88 ALLCC 146 : (2015) 2 Crimes 314

Hon'ble Judges : Ranjana Pandya, J

Bench : Single Bench

Advocate : Om Narayan Dwivedi, Advocate for the Appellant

Judgement

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Ranjana Pandya, J.—This revision has been preferred to quash the impugned order dated 20.04.2014 passed by Chief Judicial Magistrate, Banda in case No. 431 of 2014. Brief facts are that the complainant Shiv Dulari had moved an application under Section 156(3) Cr.P.C. stating that on 16.03.2014 at about 09:30 p.m. when she was at her house, her neighbour Raj Kumar, Kallu and one unknown person came and asked about the whereabouts of her husband. She stated that her husband has gone to Attara. At this all the three persons entered to her house and made her naked and tried to gang rape her. On hue and cry being raised by the complainant, her children come from the adjoining room then the accused ran away abusing all the people and threatening to kill them. The complainant went to the police station to lodge a report but her report was not lodged. The senior officers were also informed but no action was taken. Hence, this application under Section 156(3) Cr.P.C. was presented which was dismissed vide order dated 20.04.2014.

2. Learned lower court opined that there was no reason to get the case registered and investigated.

3. Learned counsel for the revisionist has argued that Section 124 Cr.P.C. has been amended and proviso has been inserted by virtue of which such information shall be recorded by a woman police officer or any woman officer.

4. Learned counsel for the revisionist has also relied upon *Lalita Kumari Vs. Govt. of U.P. and Others*, in which it has been held that how a report has to be dealt with when it is filed and the police officers should lodge a report in case a cognizable case is made out.

5. The Hon"ble Apex Court in *Lallan Chaudhary and Others Vs. State of Bihar and Another*, in which it has been laid down that Section 154 of the code thus casts a statutory duty upon the police officer to register the case, as disclosed in the complaint, and then to proceed with the investigation.

6. In *Minu Kumari and Another Vs. The State of Bihar and Others*, it has been laid down that:--

"Section 482 of the Criminal Procedure Code does not confer any new power on the High Court. It only saves the inherent power which the Court possessed before the enactment of the Code. It envisages three circumstances under which the inherent jurisdiction may be exercised namely, (i) to give effect to an order under the Code, (ii) to prevent abuse of the process of court, and (iii) to otherwise secure the ends of justice. It is neither possible nor desirable to lay down any inflexible rule which would govern the exercise of inherent jurisdiction."

7. While exercising powers under the section, the Court does not function as a court of appeal or revision. Inherent jurisdiction under the section though wide has to be exercised sparingly, carefully and with caution and only when such exercise is justified by the tests specifically laid down in the section itself. It is to be exercised to do real and substantial justice for the administration of which alone courts exist. Authority of the court exists for advancement of justice and if any attempt is made to abuse the authority so as to produce injustice, the court has power to prevent abuse.

8. Similarly, in *Aleque Padamsee and Others Vs. Union of India (UOI) and Others*, it has been held as under:--

"while dealing with the issue whether it is within the powers of courts to issue a writ directing the police to register a First Information Report in a case where it was alleged that the accused had made speeches likely to disturb communal harmony, this Court held that the police officers ought to register the FIR whenever facts brought to their notice show that a cognizable offence has been made out. In case the police officials fail to do so, the modalities to be adopted are as set out in Section 190 read with Section 200 of the Code. As such, the Code itself provides several checks for refusal on the part of the police authorities under Section 154 of the Code."

9. However, on the other hand, there are a number of cases which exhibit that there are instances where the power of the police to register an FIR and initiate

an investigation thereto are misused where a cognizable offence is not made out from the contents of the complaint. A significant case in this context is the case of Preeti Gupta and Another Vs. State of Jharkhand and Another, wherein this Court has expressed its anxiety over misuse of Section 498-A of the Indian Penal Code, 1860 (in short "the IPC") with respect to which a large number of frivolous reports were lodged. The Court expressed its desire that the legislature must take into consideration the informed public opinion and the pragmatic realities to make necessary changes in law.

10. It has further been held that information to police regarding commission of cognizable offence, if given, to a police officer but no action has taken by the police then a proper remedy is given to the complainant under Section 190 read with Section 200 Cr.P.C. to lay the complaint before the Magistrate concerned. Then the Magistrate is required to enquire into the compliance as provided in Chapter XV Cr.P.C. and writ petition in such case was held to be not maintainable.

11. In All India Institute of Medical Sciences Employees' Union (Regd.) through its President Vs. Union of India (UOI) and Others, the Hon"ble Apex Court has laid down that:--

"3. The Code of Criminal Procedure, 1973 (for short "the Code") prescribes the procedure to investigate into the cognizable offences defined under the Code. In respect of cognizable offence, Chapter XII of the Code prescribes the procedure: information to the police and their powers to investigate the cognizable offence. Sub-section (1) of Section 154 envisages that:

"Every information relating to the commission of a cognizable offence, if given orally to an officer in charge of a police station, shall be reduced 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 signed 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."

12. On such information being received and reduced to writing, the officer in charge of the police station has been empowered under Section 156 to investigate into the cognizable cases. The procedure for investigation has been given under Section 157 of the Code, the details of which are not material. After conducting the investigation prescribed in the manner envisaged in Chapter XII, charge-sheet shall be submitted to the court having jurisdiction to take cognizance of the offence. Section 173 envisages that:

"(1) Every investigation under this Chapter shall be completed without unnecessary delay.

(2) As soon as it is completed, the officer in charge of the police station shall forward to a Magistrate empowered to take cognizance of the offence on a police report in the form prescribed by the State Government giving details therein.

Upon receipt of the report, the Court under section 190 is empowered to take cognizance of the offence. Under Section 173(8), the investigating officer has power to make further investigation into the offence."

13. When the information is laid with the police but no action in that behalf was taken, the complainant is given power under Section 190 read with Section 200 of the Code to lay the complaint before the Magistrate having jurisdiction to take cognizance of the offence and the Magistrate is required to inquire into the complaint as provided in Chapter XV of the Code. In case the Magistrate after recording evidence finds a prima facie case, instead of issuing process to the accused, he is empowered to direct the concerned police to investigate into the offence under Chapter-XII of the Code and to submit a report. If he finds that the complaint does not disclose any offence to take further action, he is empowered to dismiss the complaint under Section 203 of the Code. In case he finds that he complain/evidence recorded prima facie discloses offence, he is empowered to take cognizance of the offence and would issue process to the accused.

14. In this case, the petitioner had not adopted either of the procedure provided under the Code. As a consequence, without availing of the above procedure, the petitioner is not entitled to approach the High Court by filing a writ petition and seeking a direction to conduct an investigation by the CBI which is not required to investigate into all or every offence. The High Court, therefore, though for different reasons, was justified in refusing to grant the relief as sought for.

15. Thus the complainant failed to take recourse to the appropriate remedy as provided under the Code of Criminal Procedure.

16. Thus, the criminal revision has not maintainable.

17. There is no illegality, irregularity or impropriety in the order under revision. Accordingly the revision is dismissed.