
(2008) 01 AHC CK 0057
In the Allahabad High Court

Smt. Anjum

APPELLANT

Vs

State of U.P. and Shri Yamin

RESPONDENT

Date of Decision : 24-01-2008

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 156, 325
Penal Code, 1860 (IPC) — Section 325, 363, 364, 366

Citation : (2008) 01 AHC CK 0057

Hon'ble Judges : V.D. Chaturvedi, J

Bench : Single Bench

Final Decision : Allowed

Judgement

V.D. Chaturvedi, J.—AT the outset learned Counsel for the petitioner requests for permission to delete the name of the opposite party No. 2 stating that opposite party No. 2 has no locus standi and he was erroneously made opposite party No. 2. AGA has no objection. The learned Counsel for the petitioner is permitted to delete the name of the opposite party No. 2 during the course of the day. Heard.

2. The magistrate's order, whereby he treated the petitioner's petition u/s 156(3) Cr.P.C. as complaint and whereby the magistrate declined to pass the order of investigation, is under challenge.

3. Learned Counsel for the petitioner contends that the petitioner moved an application u/s 156(3) Cr.P.C. against accused Yameen stating that accused Yameen entered into the petitioner's house with evil motive in the absence of her husband and outraged her modesty; that when she resisted, the accused Yameen had beaten her by a danda and had broken her tooth. He contends that she was medically examined after her husband came back and the injury reports (page No. 8 and 9 of the affidavit) support the allegations of offence u/s 325 IPC. Yet the magistrate declined to pass the order for the investigation on the petition u/s 156(3) moved by the lady petitioner on the ground that all the facts which could be investigated were already known to the petitioner.

4. The criteria for ordering the investigation u/s 156(3) Cr.P.C. is not solely what the magistrate has stated. The word "may" occurring in Section 156(3) Cr.P.C. is of utmost significance. It gives the magistrate a discretionary power to order or not for an investigation into the cognizable offence disclosed in the petition. This discretionary power ought to have been exercised only on reasons and not on arbitrariness. This discretionary power has been given to magistrates to enable them to deal adequately with both types of the petitions (i) the genuine petitions containing truthful allegations about the commission of the cognizable offence and (2) the petitions having baseless or false allegations. The increasing tendency of the people to file petitions on false allegations cannot be ignored. The petitions of later category are filed with the motive to unnecessarily harass the opponents, by taking the undue advantage of the provisions of Section 156(3) Cr.P.C.

5. Hence while dealing with the petitions u/s 156(3) Cr.P.C., it is the duty of the magistrate to make it a point that no petitioner of the later category may succeed in his wicked game. His petition needs to be dismissed with firmness and boldness. At the same time it is the poise duty of the Magistrates to ensure that no case of the former category may go uninvestigated.

6. The magistrates are thus saddled with a great responsibility to keep such a balance. It is for this purpose that the magistrates are endowed with the aforesaid discretionary powers. It is not an easy task to distinguish between the aforesaid two types of petitions. Hence following few guidelines may help them, while dealing with the powers contained in Section 156(3) Cr.P.C.

i) The investigation u/s 156(3) Cr.P.C. cannot be ordered where the petition does not disclose the commission of a cognizable offence.

ii) Magistrates are not under any obligation to order the investigation invariably in all the petitions, which disclose the commission of the cognizable offences.

iii) Where the allegation of the commission of cognizable offence is supported by any such documents which tends to inspire the confidence of the magistrate regarding the commission of a cognizable offence, the magistrate must pass the order for the investigation. Such documents may include the medical report or some other cogent material of the like nature.

iv) Where the allegation, in itself, is of such a nature which naturally inspire the confidence of a reasonable man in its truthfulness the magistrate must pass the order for an investigation. Such allegations include the allegation of rape, outraging the modesty of a woman, sodomy or the offence under Sections 363 and 366 etc, provided the victim is related to the petitioner. Such allegations involve the reputation of the family of the victim and the petitioner both, hence such allegations are generally, not levelled falsely. Hence in such cases also the magistrates must pass the order for an investigation.

v) Where the name of the accused is not known to the petitioner, the chances of

false implication are ruled out. Hence in such cases also, the investigation must be ordered,

vi) Where the recovery of the victim or the victim's corpse is to be made, the investigation must be ordered. Such as in the case of allegations of the offences u/s 363, 366 and 364 IPC. vii) Where the recovery of any valuable movable property is to be made and where there is cogent document to show the ownership of the petitioner over such moveable property, the investigation may be ordered.

viii) Where there is allegation regarding the commission of a heinous offence, the investigation must be ordered. Such as in the case of murder, culpable homicide not amounting to murder etc.

ix) Where the magistrate is of the opinion that some more facts which are in obscurity but are necessary to be investigated for the just decision of the case, the magistrate may order for the investigation provided the petition discloses the commission of a cognizable offence.

x) where there is nothing to convince the magistrate regarding the truthfulness of the allegation and where there is nothing to rule out the possibilities of the allegation being false, the magistrate must avoid to pass an order for investigation.

7. In other cases the magistrate must apply his own mind and reason while dealing with the powers u/s 156(3) Cr.P.C. The magistrate must always keep it in mind that the passing of an order for investigation in frivolous and vexatious petitions containing false allegations is an abuse of the process of the court. Simultaneously declining to pass the order for an investigation in genuine petitions containing truthfulness allegations, is akin to denial of justice to the needy persons. Both of these situations are dangerous.

8. In the case in hand, there is the allegation of outraging the modesty of a woman. Such allegations involve the reputation of the lady petitioner and also of her family hence such allegations are, generally, not levelled on false facts. Moreover, there are medical reports supporting the allegation of the offence u/s 325 Cr.P.C. which is also a cognizable offence. In these circumstances the order for an investigation was a must. The magistrate concerned grossly erred in declining to pass the order for the investigation. Such order cannot be allowed to sustain.

9. The petition is allowed. The impugned order dated 12.9.2007 is hereby set aside and the magistrate is directed to pass the order afresh within a week when the certified copy of this order is produced before him.