

(2016) 09 AHC CK 0011
In the Allahabad High Court

Case No : Criminal Procedure Code, 1973 (CrPC) - Section 169, Section 2(d)

Smt. Garima Goel

APPELLANT

Vs

State of U.P.

RESPONDENT

Date of Decision : 22-09-2016

Acts Referred:

Criminal Misc. Writ Petition No. 8868 of 2014

Citation : (2017) 99 ACrC 100 : (2017) 173 AIC 932

Hon'ble Judges : Pramod Kumar Srivastava, J.

Bench : Single Bench

Advocate : Archit Mehrotra and P.K. Mittal, Advocates, for the Petitioner; A.G.A, for the Respondents

Final Decision : Disposed Off

Judgement

Pramod Kumar Srivastava, J.—On FIR lodged by the petitioner, Case Crime no. 283 of 2012 was registered in police station Indirapuram, District Ghaziabad. In this case after investigation, police had submitted report under section 169 CrPC with conclusion of Investigating Officer that during investigation sufficient evidences were not found to initiate proceedings for prosecution against accused persons.

2. Against said final-report, the petitioner/informant had filed a protest petition dated 29.3.2013 in which many alleged discrepancies committed by I.O. during investigation were pointed out and following prayer was made:

"It is, therefore, respectfully prayed that this Hon"ble Court may be pleased to reject the final report No. 450/12 dated 17.5.2012 submitted by the police in case crime no. 283/12 under sections 498-A, 406, 420 IPC and 3/4 D.P. Act and to sent back the case for proper/further investigation in accordance with law".

3. After affording opportunity of hearing to petitioner on this protest petition, the Court of Chief Judicial Magistrate, Ghaziabad had passed order dated 20.5.2013

by which it was directed that protest petition filed by informant be registered as complaint case. Against this order of Magistrate Court, the Criminal Revision no. 375 of 2013, Garima Goel v. State of UP was preferred, which was heard and dismissed by judgment dated 11.11.2013 of Additional Sessions Judge, Court No.-12, Ghaziabad with observation that order dated 20.5.2013 of Magistrate is an interlocutory order. Against these orders dated 20.5.2013 of Magistrate Court and order dated 11.11.2013 of Sessions Court, present writ petition has been preferred by the informant of the Case Crime no. 283 of 2012.

4. Counsel for the petitioner contended that in protest petition the averments were made against the acts of Investigating Officer, and no prayer was made for prosecuting the culprits. He submitted that said protest petition, in absence of ingredients of Section 2(d) of CrPC, such protest petition could not be accepted as complaint case.

5. These contentions were refuted by the AGA, who submitted that order of Magistrate court has been confirmed by revisional court, therefore there appears no illegality or infirmity in it that may require interference by this court.

6. A complaint case can be registered only when a complaint is available before the Court. A protest petition can be registered as complaint case only when such petition contains contents of a complaint.

7. The definition of "complaint" is given in Section 2(d) of CrPC which is as under:

"Complaint" means any allegation made orally or in writing to a Magistrate, with a view to his taking action under this Code, that some person, whether known or unknown, has committed an offence, but does not include a police report.

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

8. In present matter, a perusal of protest petition reveals that said petition neither includes averments relating to offence by any particular person nor any allegation was made against any accused and no prayer was made for prosecuting any culprits. In said petition, no prayer was made by petitioner for taking action against any person whether known or unknown, and no averment was specifically made that any particular person had committed any offence. In these circumstances, this contention is correct that protest petition of the petitioner dated 29.3.2013 was not complaint within the definition of section 2(d) of CrPC. Therefore, said petition could not be accepted as complaint case. These points were neither considered by trial court nor by lower revisional court, which had passed orders with presumption that protest petition would have mentioned allegations of commission of offence and would have mentioned the request for prosecution of any particular person. These orders are erroneous and are liable to be quashed.

9. In view of above, this writ petition is allowed. The impugned order dated 20.5.2013 passed by the Chief Judicial Magistrate, Ghaziabad and the judgment dated 11.11.2013 passed by Additional Sessions Judge, Court No.-12, Ghaziabad for protest petition relating to Case Crime no. 283 of 2012, police station Indirapuram, Ghaziabad, are set aside. The matter is remanded back to trial court with direction to dispose of the protest petition of the petitioner/informant Garima Goel in accordance with law.