
(2007) 09 AHC CK 0051
In the Allahabad High Court

Smt. Gulista and Others

APPELLANT

Vs

State of U.P. and Hassan Ahamad

RESPONDENT

Date of Decision : 10-09-2007

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 154, 156

Citation : (2008) CriLJ 1162 : (2009) 5 RCR(Criminal) 134

Hon'ble Judges : Shiv Shanker, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Shiv Shanker, J.—This criminal revision has been directed against the impugned order dated 30.7.2007 passed by the Civil Judge (Junior Division)/Judicial Magistrate, Gautam Buddh Nagar in Misc. Case No. 2 of 2007, Ahmad Hasan v. Kami and Ors. by which the application moved u/s 156(3) of the Code of Criminal Procedure on behalf of opposite party Nos. 2 Hassan Ahmad was allowed and it was ordered to register and investigate the case.

2. Heard Sri Sunil Kumar, learned Counsel appearing on behalf of revisionists and learned A.G.A. as well as perused the materials available on record.

3. Learned Counsel for the revisionists has contended that a false case has been concocted against Kamil & other revisionists by opposite party No. 2 in the application moved u/s 156(3), Cr.P.C. It is further contended that first a complaint had to be filed before the concerned Magistrate upon which, the procedure under Chapter XV of the Code of Criminal Procedure was to be adopted. Thereafter, finding out a prima facie case, the procedure of Chapter XII of the Code of Criminal Procedure is to be adopted. Therefore, the impugned order has not been passed in accordance with the law.

4. It is further contended that the dispute had already been referred to the larger bench by Hon'ble Mr. Justice R.K. Rastogi in Sukhwasi v. State of U.P. 2007(5)ADJ 560 regarding the decision given by Hon'ble Mr. Justice Vinod

Prasad in the case of Smt. Masuman, ETC. ETC. v. State of U.P. and Ors. 2006 (8) ADJ. 377. Therefore, this matter be also referred to the larger Bench and till then the protection be given to the revisionists.

5. It is further contended that the dispute in between both the parties can be decided by resorting the conciliation and mediation and till then the protection be also given to the revisionists.

6. On the other hand, learned A.G.A. has urged that the revision Is not maintainable against the impugned order passed by the concerned Magistrate on the application moved u/s 156(3) Cr.P.C.

7. There are several pronouncements of the Apex Court that the Magistrate can pass order u/s 156(3), Cr.P.C. On the basis of disclosing the prima facie cognizable offence according to the facts mentioned in the application. Some of them are as under:

1. T. Vengama Naidu Vs. T. Dora Swamy Naidu and Others,
2. Harishchandra Prasad Mani and Others Vs. State of Jharkhand and Another,
3. Mohd. Yousuf Vs. Smt. Afaq Jahan and Another,
4. Ram Swarup v. Mohd. Javed Razack and Anr. 2005 C LJ 1725.

8. So far the decision of Apex Court in the case of Aleque Padamsee and Others Vs. Union of India (UOI) and Others, is concerned, it relates regarding the complaints and writ petitions in such a case as not maintainable. Therefore, the Magistrate is empowered to pass an order u/s 156(3) Cr.P.C. If the first information report is not registered by the police u/s 154 Cr.P.C. for cognizable offence. In this view of the matter, the contention of the learned A.G.A. has much force that the order, passed u/s 156(3), Cr.P.C. In respect of registering and investigating the case, is an inter locutory order. Therefore, criminal revisions/petitions against such orders, are not maintainable.

9. It has been observed in the decision of this Court rendered by Hon''ble Mr. Justice Vinod Prasad in the case of Ram Kishore Purohit v. State of U.P. and Ors. reported in 2007 (2) JI C 194 (Allahabad High Court) that the prospective accused does not have any right to say that Magistrate does not have any power to direct police to lodge the FIR for cognizable offence. It has also been observed in the decision rendered by Hon''ble Mr. Justice Vinod Prasad in the case of Rakesh Kumar and Ors. v. State of U.P. and Ors. Reported in 2007 (2) 191 (All) as under:

The proposed accused cannot appear and say that the F.I.R. should not be registered against him of a cognizable offence. Once a cognizable offence is disclosed, it is the law that F.I.R. must be registered. Pre-registration of F.I.R., hearing is not contemplated under the Code of Criminal Procedure, The Code of Criminal Procedure does not give any right to anybody to challenge the registration of F.I.R. against him when he is alleged to have committed a

cognizable offence. If allowed such a procedure will be against the statutory provision.

10. It has further been held in decisions of Apex Court in *Amar Nath and Ors. v. State of Haryana and Anr.* 1977 SCC 585 and *Union of India v. W.N. Chadha* 1993 SCC 1171, that the revision is not maintainable.

11. Therefore, in view of the decisions of this Court, the revision is not maintainable against the order passed u/s 156(3) Cr.P.C. for registering and investigating the case. In such circumstances, the contention made by the learned Counsel for the revisionists has no force.

12. So far as the second contention is concerned, it has been observed by Hon"ble Mr. Justice Vinod Prasad in his judgment rendered in the case of *Smt. Masuman v. State of U.P. and Ors.* (supra) that no order can be passed on the application u/s 156(3) Cr.P.C. Regarding treating the complaint and the application moved u/s 156(3), Cr.P.C. be allowed for ordering to register and investigate the case. This question has, been referred to the larger Bench by Hon"ble Mr. Justice R.K. Rasogi in the case of *Sukhwasi v. State of U.P.* (supra). In the present revision, the above question is not disputed. In the case in hand, the application moved u/s 156(3), Cr.P.C. has been allowed by the concerned Magistrate. In such circumstances, this question is not liable to be referred to the larger bench.

13. So far as the third question is concerned, the matter may be referred by resorting the proceedings of reconciliation and mediation. Therefore, the record of the case be put up before the Registrar, Reconciliation/Mediation Center, High Court, Allahabad who will issue notice to both the parties fixing a date to personally appear before him and will then refer the matter for reconciliatory proceedings. The conilator is allowed two months" time to go into the conciliatory proceedings between the parties but no further order regarding any protection can be passed.

14. For the reasons mentioned above, I am of the opinion that the criminal revision filed against the impugned order passed on the application moved u/s 156(3), Cr.P.C. Is not revisable.

Consequently, the revision is hereby dismissed.