
(2006) 10 AHC CK 0004
In the Allahabad High Court

Smt. Ishrat

APPELLANT

Vs

State of U.P. and Chief Judicial Magistrate

RESPONDENT

Date of Decision : 19-10-2006

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 156, 157, 2, 200
Penal Code, 1860 (IPC) — Section 323, 354, 376, 452, 504

Citation : (2007) 1 ADJ 508 : (2007) 5 RCR(Criminal) 628

Hon'ble Judges : Vinod Prasad, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Vinod Prasad, J.—Heard learned Counsel for the revisionist and the learned A.G.A.

2. Smt. Ishrat wife of Arif filed an application u/s 156(3) Cr.P.C. on 18.9.2006 before C.J.M. Bulandshahr for offences under Sections 452, 376, 511, 504, 506, 354, 323 I.P.C, P.S. Sikandrabad, district Bulandshahr against accused Abdul Haq Shawkeen, Mobin, Kamil, Yamin with the allegations that the alleged accused persons entered into her house forcibly and pushed Smt. Ishrat on the ground and then after tearing off waist tie up (Nara) of her cloths they tried to commit rape on her and molested her. On resistance being shown by her she was beaten as well. Kumari Farah, the niece of the applicant who had reached on the spot hearing shrieks of Smt. Ishrat was also assaulted. Smt. Ishrat as well as Kumari Farah sustained grievous injury and got themselves medically examined in Government Hospital, Sikandrabad. The incident was witnessed by Anwar, Fasal and many others. The accused made their escaped good and while escaping they also threatened the lady with her life. Smt. Ishrat informed police of police station Sikandrabad but they did not act as was expected of them. Mohammad Arif, husband of Ishrat also filed an application on 15.9.2006 before S.S.P. Bulandshahr but in vain and no. F.I.R. was registered in respect of the said crime. On these facts the application u/s 156(3) Cr.P.C. was filed by Smt. Ishrat. The Magistrate, C.J.M. Bulandshahr, registered the application and vide

impugned order dated 4.10.2006 refused to direct the police to register the F.I.R. and investigate the offence and treated the said application as a complaint case and registered it as complaint case No. 5702 of 2006. He also ordered for getting the statement u/s 200 Cr.P.C. recorded and fixed 20.12.2006 after a gap of two months for it.

3. I have heard learned Counsel for the revisionist and the learned A.G.A. at a great length.

4. This is a glaring example of injustice, which is being meted out to the victim at the hands of a Judicial Officer. Unmindful of his duty and the law the C.J.M., Bulandshahr transgressed the mandate of law, which has been spelt out by the Apex Court in the case of R.S. Raghunath Vs. State of Karnataka and another, The application of the applicant clearly disclosed serious offence of attempt to commit rape on a lady and molestation inside her house. I do not understand what will be nature of case, which the C.J.M. Bulandshahr will send for investigation if the present case does not come, in his opinion, within purview for ordering investigation. C.J.M. concerned passed the impugned order in an unmindful manner without looking into the law laid down by the Apex court. Let me make it clear that the power of investigation lies with the police. Magistrate has no power to investigate any offence. Once the Magistrate does not have any power to investigate he lacks all the ancillary powers to decide whether investigation is required or not. Investigation is the realm of the police u/s 156 read with 157 Cr.P.C. It is for the police to come to a conclusion that the matter requires investigation or not. If it decides not to investigate the matter it will make note of the same and will inform the informant regarding the same. It is for the informant then to take recourse to the law as he deems fit. The Magistrate cannot say that he will not send the application of cognizable offence for investigation as the law is that if a cognizable offence is disclosed the police must register the F.I.R. and must investigate the offence.

5. The Apex Court has held that if the F.I.R. of cognizable offence is not registered by the police it flouts the mandate of law and act against it. Section 156(3) Cr.P.C. relates with such power police under the orders of the Magistrate. C.J.M. concerned was expected to direct the police to follow the mandate of law. He was not expected to act against the provisions of law and pass the impugned order. C.J.M. Bulandshahr cannot take cognizance of offence suo motu when no complaint was filed before him and he cannot suo motu start litigation. The victim only wanted him to direct the police to exercise their plenary power of investigation and she never wanted to start the litigation, which was solely her domain. Filing of a complaint or not filing of a complaint is within the province of the victim. The Magistrate was nobody to treat the application u/s 156(3) Cr.P.C. into one u/s 2(d) Cr.P.C. and take cognizance of the offence suo motu. The law does not confer any such power on the Magistrate without any prayer being made to him for it as the prosecution of a complaint case is the responsibility of the complainant. There may be thousands of reasons for the victim for not filing

complaint. The accused may be so powerful that the victim may not be in a position to bring his witnesses in court, or that the witnesses may be reluctant to come to the Court or that the victim may be so poor as not to be in a position to bear the expenses of witnesses or that he/she wanted to get some more materials collected which he/she cannot do himself/herself etc. etc. Moreover after, the police does not register the F.I.R. so as to paint a better graph of crime under their police circle to win the laurels of their Godfathers. Thus in view of what has been said here the C.J.M. concerned by passing the impugned order has not only committed miscarriage of justice but has given the most brutal shock to the victim by passing an unmindful impugned order.

6. In this view of the matter, the present revision is allowed at the admission stage itself. The impugned order dated 4.10.2006 passed by the C.J.M., Bulandshahr in case No. 5702 of 2006, Ishrat v. Abdul Haq and Ors. is hereby quashed. C.J.M. Bulandshahr is directed to take up the application of the revisionist Smt. Ishrat u/s 156(3) Cr.P.C. afresh and pass a reasoned order thereon in accordance with law.

7. This revision is allowed.