
(1996) 04 AHC CK 0152

In the Allahabad High Court

Case No : Criminal Misc., Application No. 1018 of 1996

Smt. Jamna and Others

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 10-04-1996

Acts Referred:

Constitution of India, 1950 — Article 226

Criminal Procedure Code, 1973 (CrPC) — Section 156(3), 200, 202, 482

Penal Code, 1860 (IPC) — Section 147, 148, 149, 302, 307

Citation : (1996) 20 ACR 522

Hon'ble Judges : C.A. Rahim, J

Bench : Single Bench

Advocate : Sunil Kumar, for the Appellant; A.G.A., for the Respondent

Judgement

C.A. Rahim, J.—Heard learned Counsel. It has been submitted that Crime Case No. 71A/96 was started on the basis of an order of the Magistrate u/s 156(3), Code of Criminal Procedure but the learned Magistrate has got no power to proceed under that Section. Since a complaint when filed u/s 200, Code of Criminal Procedure the Magistrate is to adopt the procedure of that Chapter and he is to examine the complainant and witnesses in their favour. If he desires that the matter should be investigated, he can send it to the police station u/s 202, Code of Criminal Procedure. There is no provision of law to file an application u/s 156(3), Code of Criminal Procedure. It has also been submitted that under that Section, a Magistrate can direct for investigation but cannot ask for registration of the case. The later part of the submission is covered by Suraj Mal's case 1993 ACC 81. A Division Bench of this Court has decided the issue stating that "objection of the learned Counsel that registration of a case in the police station could not be directed by the learned Magistrate, is not correct." This rests with the matter relating to the power of the Magistrate to issue a direction for registration of a case. But with regard to the first part of the submission of the learned Counsel that the complaint must be filed u/s 200, Code of Criminal Procedure is not borne out with the spirit of the provisions in Code of Criminal

Procedure in regard to the lodging of a case. The complaint as per Section 2(d), Code of Criminal Procedure means any allegation made orally or in writing to a Magistrate, with a view to his taking action under this Code. So it is not confined that a Magistrate should take action u/s 200, Code of Criminal Procedure only. Under that Section, the Magistrate may take action when he wants to take cognizance of an offence and if he does not take cognizance. Sections 200 and 202, Code of Criminal Procedure do not come to play.

2. u/s 156(3), Code of Criminal Procedure, what the Magistrate is empowered to do is to see whether any cognizable offence has been disclosed. Scrutiny of the complaint is limited to that extent only and if he is convinced that such a condition has been fulfilled, he will send the complaint to the police station with a direction for registration and for investigation. In this regard, the contention of the learned Counsel is not correct that the Magistrate is powerless in this respect. So this part of the contention is, therefore, rejected.

3. The learned Counsel has submitted that the occurrence took place on 5.3.1996 in which one Kanhaiya was murdered and as many as three persons received fire-arm injuries. The case was started being Crime No. 71A/96 under Sections 147, 148, 149, 302, 307, 504, I.P.C against nine accused persons. All of them, besides one Subhash have been arrested and lodged in judicial custody. The allegation is that said Subhash got an application filed through one Bharat Pal u/s 156(3), Code of Criminal Procedure which was directed to the Police Station for registration and for starting a case being case Crime No. 71 A/96 under Sections 147, 148, 149, 302, 307, 323, 504, I.P.C. The learned Counsel has submitted that the date of the occurrence is the same but the story has been manufactured in a different way. According to him, the said case has been engineered as a counter blast with mala fide intention in collusion with the police. The learned Counsel has referred to the case of Mohd. Habibur Rahman Faizi and Ors. v. State and Anr. 1995 JC 672 . In that case, the celebrated case of State of Haryana and others Vs. Ch. Bhajan Lal and others, has been referred wherein it has been decided that u/s 482, Code of Criminal Procedure or under Article 226 of the Constitution, the High Court may interfere where criminal proceeding is manifestly attended with mala fide. It may be that the instant proceeding is counter-blast of the murder case, probably to put a defence of right of private defence during the trial or it may be that out of sheer malice, the instant case was started after about 8 days. The fact which has been impressed before me does not lead to an irresistible conclusion that it was instituted maliciously or with ulterior motive for taking vengeance or the proceeding is manifestly attended with mala fide.

4. To unearth the allegation of the learned Counsel, it is necessary to investigate. In the case of Janata Dal Vs. H.S. Chowdhary and Others, , it has been held that:

The High Court should normally refrain from giving a pre-mature decision in a case where entire facts are extremely incomplete and hazy, more so when evidence has not been collected and produced before the court and issues

involved whether factual or legal, all of great magnitude and cannot be seen in their true perspective without seeing the material.

5. It would be, therefore, premature to hold at this stage that there was mala fide intention in lodging the instant case for which I feel that full fledged investigation is necessary. So the contention of the learned Counsel fails and prayer for quashing the first information report, at this juncture, is refused.

6. A question has been raised whether this Court, while enjoying inherent power u/s 482, Code of Criminal Procedure can quash the First Information Report and stay the arrest. In Ram Lal Yadav and Ors."s case 1989 ACC 1981 (FB), it was held that power of the police to investigate into a report which discloses commission of a cognizable offence is unfettered and cannot be interfered by the High Court in the exercise of its inherent power u/s 482, Code of Criminal Procedure. Thereafter, in 1990 in the case of Prasant Gaur v. State of U.P. 1991 (IIXXX) ACC 399 , a single Bench of this Court, on the basis of two decisions of the Supreme Court, namely, the cases of State of Andhra Pradesh Vs. P.V. Pavithran, and the case of State of U.P. Vs. R.K. Srivastava and Another, , referred the question whether in view of those two decisions of the Supreme Court, the Full Bench decision in Ram Lal Yadav's case is a good law, to a larger Bench which is yet to be constituted.

7. In the case of Union of India v. B.R. Bajaj 1994 JIC 238, it has been held that the High Court may interfere at the stage of the First Information Report, may look into whether it has disclosed any cognizable offence. In that case, the Supreme Court has gone into the fact and stated that while considering that aspect of the matter, it should not take into consideration the other records, including affidavits produced by accused persons while interfering at the stage of the First Information Report u/s 482, Code of Criminal Procedure. It was not an issue in that case whether a First Information Report can be quashed by the High Court while considering it in the jurisdiction enshrined u/s 482, Code of Criminal Procedure. But it has not been stated that the High Court cannot do so. It has also been held that in exercising the inherent power at the stage of the First Information Report when the same discloses commission of cognizable offence, which is still to be investigated by the police, it should not enjoy the power of the appellate court.

8. This is sufficient to explain that the Supreme Court has laid down that in some cases, and in a very limited way, that too sparingly, this Court has the power to interfere u/s 482, Code of Criminal Procedure when the First Information Report does not disclose any offence.

9. Since to consider the decision of Ram Lal Yadav's case, the matter has been referred to constitute a larger Bench and in the meantime the Supreme Court in some of the cases have gone into the matter and held in favour of taking action u/s 482, Code of Criminal Procedure, I am constrained to hold that for the very limited purpose, this Court can proceed in examining whether the First

Information Report has disclosed any cognizable offence u/s 482, Code of Criminal Procedure. But in the instant case, I find that the First Information Report registered under Crime Case No. 71 A/96 has disclosed a cognizable case and hence it cannot be quashed.

10. Considering the fact that Crime Case No. 71A/96 was lodged after 8 days of the occurrence and that too by filing an application u/s 156(3), Code of Criminal Procedure, in which some of the witnesses of the murder case in Crime Case No. 71 A/96 were accused who received fire-arm injuries, I consider that in order to have free and fair investigation, arrest of the accused persons in Crime Case No. 71 A/96 be stayed.

11. The application is disposed of with a direction that till submission of the charge-sheet or completion of the investigation, whichever is earlier, arrest of the applicants in Crime Case No. 71A/96 u/s 147, 148, 149, 307, 323, 504 and 506, I.P.C, Police Station Sikandrabad, District Bulandshahr, be stayed. However, the investigation shall proceed in which the applicants shall cooperate.