
(2007) 06 AHC CK 0059
In the Allahabad High Court

Smt. Pushpa Tyagi

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 29-06-2007

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 154, 156, 200
Penal Code, 1860 (IPC) — Section 376, 511

Citation : (2007) 06 AHC CK 0059

Hon'ble Judges : Vinod Prasad, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Vinod Prasad, J.—The revisionist Smt. Pushpa has challenged the order dated 26.10.2006 passed by Upper Mukhya Nyayik Magistrate, Hapur Ghazibad in Criminal Miscellaneous case No. 2189 of 2006 Pushpa v. Subodh Tyagi and Ors. by which her application u/s 156(3) Cr. P.C. was ordered to be registered as a complaint case instead of directing her F.I.R. to be registered.

2. The narration of facts are that an application u/s 156(3) Cr. P.C. was filed by Smt. Pushpa against Subodh Tyagi, Om Prakash Tyagi, Jagdish Tyagi and Sri Chandra in the court of A.C.J.M., Hapur on 3.10.2006 with the allegations that she is a pardanashin lady and the alleged accused persons were resident of her own village and they are criminals and history sheeters, who indulge into abduction murder etc. Because of their illegal activity there is terror of the accused persons in the area.

3. On 19.9.2006 at 6.00 p.m. the revisionist applicant Smt. Pushpa was preparing food of her small children in her house. Her husband had gone out with some work. At that time the alleged malefactors accompanied by two other unknown persons entered into the house of the revisionist applicant Smt. Pushpa hurling filthily abuses and thereafter Subodh one of the accused, caught hold of her by breast, two other accused Jagdish Tyagi and Sri Chandra threw her on the ground and Subodh attempted to commit rape on her. Her children raised hue

and cry on which the husband of the victim and one Uttam Singh along with co-neighbours collected on the spot. The accused persons failing in their attempt to commit rape on the victim bet her with kicks and fists and then left the house.

4. The victim went to lodged the F.I.R. but her F.I.R. was not registered by the police. Thereafter the victim got herself medically examined in UPHC, Hapur, District Ghaziabad on 20.9.2006 vide annexure No. 2 to the affidavit filed in support of this application, in which the injures has been found on her breast right upper arm and forearm.

5. With such allegations the revisionist had approached the Magistrate for getting her F.I.R. registered. The Magistrate refused to direct registration of a F.I.R. and treated her application as a complaint and directed her to lead evidence u/s 200 Cr. P.C. by passing the impugned order, which has been assailed in the present revision.

6. Heard learned Counsel for the revisionist and the learned A.G.A. In this case the application of the revisionist made out a case for an attempt to rape u/s 376/511 I.P.C. In any case she was molested by the accused persons in view of her own children. If such a matter was not fit for investigation it is not understandable what matters will be referred to by the ACJM concerned to get the offence investigated. How a helpless lady will fight a compliant case against accused persons who were so daring as to entered into her house and commit rape on her is also not understandable. A.C.J.M. Concerned has not given any reason why the F.I.R. of the victim should not be registered. Treating her application for registration of F.I.R. as a complaint was a subsidiary issue. The primary concerned was why the F.I.R. should be refused to be ordered to be registered when the cognizable offence was disclosed. A.C.J.M. concerned was required to consider the prayer for registration of F.I.R. first. He was nobody to refuse to order for registration of F.I.R. once the cognizable offence was disclosed. The conduct of A.C.J.M. concerned shows that he is not concerned at all with the chastity the women folk. He is so unmindful that he did not realizeat all that the accused persons attempted to commit rape on a lady. His impugned order is wholly illegal absolutely unjust and say the least is total miscarriage of justice.

7. Further the application u/s 156(3) Cr. P.C. can be treated to be a compliant only when the victim wants the court to treat it like so. Filing of a complaint is a right of the victim. Court can not start the litigation be converting an application u/s 156(3) Cr. P.C. into a complaint on its own. It was not the court, which was to prosecute the accused in a complaint case. It was the victim who was to prosecute the accused in a complaint case. The procedure of complaint case is such that in the absence of complainant her complaint can even be dismissed. Further the magistrate concerned did not addressed himself to the question that the victim never wanted to prosecuted the accused persons in a complaint case because she was a poor and helpless lady. The unmindful attitude of A.C.J.M. concerned is condemnable. The Apex Court has also dealt with such type of

attitude in the case of Ramesh Kumari Vs. State (N.C.T. of Delhi) and Others, and has held as follows:

3. Mr. Vikas Singh, learned Additional Solicitor General, at the outset, invites our attention to the counter-affidavit filed by the respondent and submits that pursuant to the aforesaid observation of the High Court the complaint/representation has been subsequently examined by the respondent and found no genuine case was established. We are not convinced by this submission because the sole grievance of the appellant is that no case has been registered in terms of the mandatory provisions of Section 154(1) of the Criminal Procedure Code. Genuineness or otherwise of the information can only be considered after registration of the case. Genuineness or credibility of the information is not a condition precedent for registration of a case. We are also clearly of the view that the High Court erred in law in dismissing the petition solely on the ground that the contempt petition was pending and the appellant had an alternative remedy. The ground of alternative remedy nor pending of the contempt petition would be no substitute in law not to register a case when a citizen makes a complaint of a cognizable offence against the Police Officer.

5. The views expressed by this Court in paragraphs 31, 32 and 33 as quoted above leave no manner of doubt that the provision of Section 154 of the Code is mandatory and the concerned officer is duty bound to register the case on the basis of such an information disclosing cognizable offence.

6. Undisputedly, in the present case no case was registered pursuant to the complaint dated 9-9-1997 and 13-9-1997 filed by the appellant. It is also not disputed that the Contempt Petition CCP No. 307/1997 filed by the appellant is also pending disposal before the High Court. It is, however, stated by the respondent that the non-disposal of the contempt petition is due to the non-prosecution by the appellant. Be that as it may, we "are of the view that the contempt petition has been pending since 1997 and as such petition should be disposed of with a sense of urgency otherwise the petition itself will lose all its force and the purpose for which the contempt is initiated would be defeat.

8. I do not want to say further regarding the manner in which the Magistrate has disposed off the application of the revisionist but only observe this much that A.C.J.M. concerned has done most flagrant miscarriage of justice. Chastity of a lady is not redeemable.

9. With the aforesaid observations, this revision is allowed. The impugned order dated 26.10.2006 passed by Upper Mukhya Nyayik Magistrate, Hapur Ghazibad in Criminal Miscellaneous case No. 2189 of 2006 Pushpa v. Subodh Tyagi and Ors. u/s 156(3) Cr. P.C. is hereby set aside. The matter is remanded back to A.C.J.M. concerned to pass appropriate order in accordance with law within a period two weeks positively from the date of receipt of certified copy of this order by him.