
(2009) 09 AHC CK 0033
In the Allahabad High Court
Case No : Criminal M.A. No. 21606 of 2009

Smt. Shabnam

APPELLANT

Vs

State of U.P.

RESPONDENT

Date of Decision : 10-09-2009

Acts Referred:

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

Citation : (2009) 3 ACR 3423 : (2010) 1 Crimes 672

Hon'ble Judges : Vinod Prasad, J

Bench : Single Bench

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

Judgement

Vinod Prasad, J.—I have heard learned Counsel for the applicant, learned A.G.A. and perused the record of this case.

2. This is a most surreal case, which has come before me. Victim Shabnam has filed this application, being aggrieved by the order dated 1.8.2009, by which Judicial Magistrate, I Ind Court No. 14, Saharanpur, has refused to direct the police to register her F.I.R. with the allegations that father-in-law of the victim, Irshad has ravished her chastity.

3. The allegations, which was levelled by the applicant victim, are that she is the wife of Mustqeen who is son of Irshad (accused). In the night between 18/19.6.2009, at 3 a.m. the applicant victim all alone was sleeping in her room, as her husband had gone out. Because of summer heat, she had kept door of her room open, when her father-in-law, Irshad (accused) entered into her room, caught hold of her, scratched her breasts and after gagging her mouth, raped her. Victim resisted in vain and she became fainted because of the ghastly ignominious act of the accused.

4. Next day morning, victim informed the incident to her mother-in-law Bindi, who advised her for not disclosing the incident to any body, as it was a matter of temerity. Victim, therefore, phoned her mother, who arrived alongwith Muneer,

brother-in-law of the victim to her on a motorcycle. Irshad (accused) had meanwhile fled away from the village. As the condition of the victim was deteriorating, she was got medically examined in District Hospital, by her mother. Thereafter, victim went to the Police Station, Nakur, but the police refused to register her F.I.R. Victim moved an application to Senior Superintendent of Police, Saharanpur also but no action was taken on the said application as well. Left with no option, victim approached the Judicial Magistrate, I Ind Court No. 14, Saharanpur, through an application u/s 156(3), Cr. P.C. annexing her medical examination report levelling the aforesaid allegations and seeking direction for the police to register her F.I.R. By the impugned order dated 1.8.2009, Judicial Magistrate, I Ind Court No. 14, Saharanpur refused to direct the police to register the F.I.R. and instead registered her application, as a complaint case and directed her to lead evidence u/s 200, Cr. P.C. Hence the present application, with the prayer to quash the impugned order dated 1.8.2009, passed by the Judicial Magistrate, I Ind Court No. 14, Saharanpur.

5. A perusal of the Medical Examination Report dated 19.6.2009 of the date of the incident, indicate that the victim was medically examined at 11.30 a.m. and following injuries were found on her body:

1. Red abrasion 3 cm. x 2 cm. on left side chest 7 cm. below left clavicle.
2. Red abrasion 2.5 cm. x 2 cm. on the right side of chest 8 cm. below left clavicle.
3. Red abraded contusion 4 cm. x 2 cm. right shoulder.
4. Red abraded contusion 5 cm. x 2 cm. on the right side of back of chest.
5. Red abraded contusion 6 cm. x 1 cm. right side back of abdomen.
6. In the opinion of the Doctor injuries 1 to 5 were caused by hard blunt and frictional object. Duration was fresh and it were simple in nature.
7. Learned Counsel for the applicant contended that the Judicial Magistrate committed blatant illegality in not directing the police to register the F.I.R. of an offence of rape committed by the father-in-law on his own daughter-in-law. The relationship is such, that she will never be able to prosecute the accused in a complaint case. Matter did require investigation, and therefore, the impugned order be set aside.
8. I have perused the impugned order and the application u/s 156(3), Cr. P.C.
9. To say the least, Judicial Magistrate, I Ind Court No. 14, Saharanpur has done gravest injustice to the victim. Even though, the said Magistrate is a lady, yet, she could not think the outcome of ravishing the chastity of daughter-in-law by her father-in-law and crime committed by the accused. The only reason assigned by the Magistrate, in not directing the police to register the F.I.R., is that the victim was in the knowledge of all the facts and the witnesses were also known to her. The contents of the order indicates total non-application of mind by the

Magistrate. Firstly, the incident had occurred inside the room in early hours of 19.6.2009. There is no mention of any witness in her application. Impugned order, therefore, has been passed against the facts of the allegations. Merely because the accused is known to the victim is no ground to reject the prayer for direction for registering the F.I.R. of an offence of rape, specially, when the Apex Court in case of Lalita Kumari has denounced the practice of police persons in not registering the F.I.R. of cognizable offences. The impugned order dated 1.8.2009, passed by Judicial Magistrate, I Ind Court No. 14, Saharanpur, is the most blemishfull injustice, which can be caused to a married lady at the hands of her own father-in-law. Alongwith her application with the prayer for registration of F.I.R., she had annexed her Medical Examination Report as well with perceptible physical injuries on her breast and at the back, which prima facie indicated physical violence exerted on her. Moreover, the medical examination was got done just after few hours of the incident which supported the allegations of the victim.

10. In my humble view, the Judicial Magistrate I Ind Court No. 14, Saharanpur has passed the impugned order ignoring all judicial discipline. She has not at all applied her judicial mind and had only referred some of the judgments of this Court, which are contrary to the opinion of the Apex Court, rendered in many decisions. Judicial order should be passed by applying judicial mind. By this judgment, I severely criticise the conduct of Judicial Magistrate, I Ind Saharanpur and record my serious displeasure against her order for passing such type of illegal orders. Judicial Magistrate, I Ind Court No. 14, Saharanpur is warned for future and is cautioned to be careful in passing judicial orders. She should have thought of that rape not only causes physical injury to the victim, but it leaves scare on mind for life long and implant the victim with such ignominy, which is worst than her death and I say no more. Though, I was inclined to refer this matter to Administrative Committee for taking action against Judicial Magistrate, I Ind Court No. 14, Saharanpur but only for the reason that she is a young officer and have long career ahead, I refrain from such a stringent action.

11. With the aforesaid observations, I allow this application and set aside the impugned order dated 1.8.2009, passed by Judicial Magistrate, I Ind Court No. 14, Saharanpur in case Shabnam v. Irshad under Section 156(3), Cr. P.C. and direct her to re-decide the application of the applicant within the ambit of her power u/s 156(3), Cr. P.C. I further direct her to pass an order for registration of F.I.R. against the erring police officers, who had refused to register applicant's victim's F.I.R. when she had approached them. Senior Superintendent of Police, Saharanpur is directed to personally monitor the investigation and take prompt and stringent action on the administrative side against the erring police personnels.

12. Copy of this order be sent to the Judicial Magistrate, I Ind Court No. 14, Saharanpur for her future guidance and also to the S.S.P., Saharanpur.