
(2010) 10 AHC CK 0267
In the Allahabad High Court
Case No : Criminal Revision No. 285 of 2007

Vineeta Soni

APPELLANT

Vs

State of U.P. and others

RESPONDENT

Date of Decision : 12-10-2010

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 154, 156(3), 397

Citation : (2010) 10 AHC CK 0267

Hon'ble Judges : Ashok Srivastava, J

Final Decision : Dismissed

Judgement

Ashok Srivastava, J.—This criminal revision is directed against the order dated 11.1.2007 passed by the learned Judicial MagistrateI, Jaunpur whereby the learned Magistrate had declined to the relevant case to proceed as a State case and ordered that the matter pending before it shall proceed as a complaint case.

2. The brief facts of the case are that an application under Section 156 (3) Cr.P.C. was moved before the learned Magistrate by the revisionist. In this application various allegations relating to the demand of dowry and cruelty by the husband and her family members were levelled. The learned Magistrate examined the said application and thereafter he decided to register the said application as a complaint. On 9.3.2005 he passed an order on the said application that the application under Section 156 (3) Cr.P.C. be registered as a complaint case and thereafter 15.3.2005 was fixed for examination of the complainant under Section 200 Cr.P.C. As a consequence, the said case was registered as criminal case no.286 of 2005. On 15.3.2005 the revisionist appeared before the court of the learned Magistrate and got herself examined under Section 200 Cr.P.C., as is evident from the ordersheet of that date. On that date the learned Magistrate passed the following order, which is partly in Hindi. The substantial portion of it is in English, which is quoted below:

"Heard Ld counsel for applicant and perused the file. Applicant Vinita Soni has in her statement on oath under Section 200 Cr.P.C. has stated that she has been

subjected to cruelty by the inlaws and her husband in connection with demand for dowry."

Under these circumstances, looking into the gravity of the offence instead of proceeding under Section 202 Cr.P.C. for statements of other witnesses it will be just to proceed under Section 202 (1) Cr.P.C.

S.H.O., Machhalishahar, Jaunpur is directed to investigate the matter. Put up on 18.4.2005 for F.O."

The above mentioned order dated 15.3.2005 was transmitted to the S.H.O., Machhalishahar, District Jaunpur. The police of the said police station instead of following the direction given by the Magistrate to inquire into the matter under the provisions of Section 202 (1) Cr.P.C. registered a case under the provisions of Section 154 Cr.P.C., investigated the same and submitted a charge sheet before the learned Magistrate.

3. It has been submitted from the side of the revisionist that when the said charge sheet was put up before the Magistrate concerned, he took cognizance of the case and registered the same as a criminal case as case crime no.8745 of 2005. This fact was brought to the notice of the learned Judicial MagistrateI, where the complaint case was pending, by opposite party no.2Sanjay Soni.

The learned Magistrate, after hearing both the parties passed an order on 11.1.2007. Learned Magistrate has held that he had directed the police of police station concerned to inquire into the matter under the provisions of Section 202 (1) Cr.P.C. and did not ask that an FIR be lodged under Section 154 Cr.P.C. Since he was of the opinion that an inquiry report in the relevant criminal case should have been submitted to him by the police but the same has not been done, the matter should proceed further keeping in view the provisions laid down under Section 202 Cr.P.C. The learned Magistrate fixed a date for the purpose. Feeling aggrieved by the order dated 11.1.2007 the revisionist has filed this revision.

I have heard learned counsel for the parties and also perused the records.

4. It has been submitted from the side of the revisionist that an FIR has been lodged by the police in the case pursuant to the order passed by the learned Magistrate on 15.3.2005 and the matter was investigated and thereafter a charge sheet has been filed. It has further been submitted that cognizance of the offence has been taken by a competent Magistrate on the basis of the charge sheet and, therefore, the case initiated on the basis of the charge sheet should proceed.

On the other hand, learned counsel appearing for opposite party nos.2 to 5 has stated that the police of police station concerned had either deliberately or due to its lack of legal knowledge registered a case on the basis of an order to inquire into a case relating to a complaint under the provisions of Section 202 (1) Cr.P.C. This is totally illegal and on the basis of such registration of a case and submission of a charge sheet is illegal because the charge sheet is the product of

an illegal action on the part of the police.

5. I have examined, with caution, the argument advanced by the learned counsel for both the sides. I have also examined the certified copy of the charge sheet, which is annexure 5 to the affidavit filed along with the memo of revision. From a perusal of the copy of the charge sheet it is evident that there are endorsements by the office on the front page of the chargesheet. The first endorsement is as follows:

CJM

8745/05

I find that there is no signature beneath the writings either of the Magistrate or of a clerk.

The second endorsement is as follows:

A.C.J. (S.D.) Ist

Jaunpur

29.7.2005

I have examined this endorsement. This endorsement has been crossed by some one and I do not find any signature either of the presiding officer or of a clerk beneath the writings. These two endorsements indicate that the charge sheet was filed in the court of Chief Judicial Magistrate where it was allotted criminal case no.8745 of 2005 but there is nothing on record, which may indicate that this criminal case was ever registered or proceeded further. It should be mentioned here that no order sheet of this criminal case has been filed in this case from the side of the revisionist. Had cognizance of this case been taken by the learned Magistrate, there would have been a signature beneath the writings where the order for cognizance is written and a date of 29.7.2005 would have been mentioned. No order sheet dated 29.7.2005 relating to criminal case no.8745 of 2005 has been filed, which may indicate that a formal order sheet was drawn in respect of criminal case no.8745 of 2005.

The above circumstances show that these facts were in the knowledge of the Magistrate concerned when the charge sheet was submitted in his office that this charge sheet had originated from an FIR, which was not ordered to be registered under Section 156 (3) Cr.P.C. It also appears that due to this reason the order, written by some official of the court, on the front face of the charge sheet, was crossed.

In the above circumstances, it is evident that factually no cognizance was taken by any Magistrate on the charge sheet filed before him relating to the FIR, which was registered at the police station without any order by the court.

Now, let us examine the legal aspect of the matter. The relevant portion of Section 202 (1) Cr.P.C. is as follows:

"..... and either inquire into the case himself or direct an investigation to be made by a police officer or by such other person as he thinks fit, for the purpose of deciding whether or not there is sufficient ground for proceeding....."

6. The word "investigation", as occurring in sub section (1) of Section 202 Cr.P.C., is definitely different to the investigation, as contained in Chapter XII of the Code. The word "investigation" as occurring in Section 202 (1) Cr.P.C. is basically an inquiry by the Magistrate, which is done by him not personally but with the aid of police or by some other person deputed by the Magistrate for the purposes. On the other hand, an investigation under Chapter XII Cr.P.C. is altogether a different proceeding. The order passed by the learned Magistrate on 13.5.2005 is totally legal and it was in his full powers to direct the police of police station, Machhalishahar to get the matter investigated on his behalf under the provisions of sub section (1) of Section 202 Cr.P.C. It appears that either due to lack of knowledge of criminal law and procedure or due to certain other reasons the police of the said police station registered a case under the provisions, as contained under Section 154 Cr.p.C. and investigated the entire case under the procedure prescribed under Chapter XII Cr.P.C. This cannot be legally done. Further, it was open to the revisionist to challenge the order passed by the Magistrate on 9.3.2005 on her application under Section 156 (3) Cr.P.C. whereby the learned Magistrate had decided to proceed with the matter treating the said application as a complaint but she had not done so. Instead, she submitted to the order and on the next date fixed in the case she appeared before the Magistrate and got herself examined under Section 200 Cr.P.C. No challenge on her part to the order passed by the learned Magistrate on 9.3.2005 indicates that the revisionist did not want that her application under Section 156 (3) Cr.P.C. be not treated as a complaint.

An FIR is lodged under the provisions of Section 154 Cr.P.C., which is as follows:

"154. Information in cognizable cases. (1) Every information relating to the commission of a cognizable offence, if given orally to an officer in charge of a police station, shall be reduced to writing by him or under his direction, and be read Over to the informant; and every such information, whether given in writing or reduced to writing as aforesaid, shall be signed by the person giving it, and the substance thereof shall be entered in a book to be kept by such officer in such form as the State Government may prescribe in this behalf.

(2) A copy of the information as recorded under subsection (1) shall be given forthwith, free of cost, to the informant.

(3) Any person aggrieved by a refusal on the part of an officer in charge of a police station to record the information referred to in subsection (1) may send the substance of such information, in writing and by post, to the Superintendent of Police concerned who, if satisfied that such information discloses the commission of a cognizable offence, shall either investigate the case himself or

direct an investigation to be made by any police officer subordinate to him, in the manner provided by this Code, and such officer shall have all the powers of an officer in charge of the police station in relation to that offence."

7. From a perusal of this section, it is evident that the Station Officer of the police station does not have power to lodge an FIR on the basis of an order passed by a Magistrate under Section 202 (1) Cr.P.C. If the police is allowed to do so, it may be difficult for a Magistrate dealing with inquiry of a complaint case to get the required inquiry done in the complaint case pending before him and this action on the part of the Magistrate shall always be open to an interference by the police. In that event it will always open to the police to stall such action of a Magistrate, who is definitely not subservient to police. This can never be the intention of the Legislature.

In the instant case a clear cut illegality has been committed on the part of the police by not following the order passed by the learned Magistrate on 15.3.2005. If, in that event the Magistrate had passed the impugned order on 11.1.2007, he was fully empowered to pass the same and proceed in the matter as he held in the last line of his order.

In the above set of circumstances, all the three rulings cited from the side of the revisionist have no application in this case.

After considering all the aspects of the case, I do not find any illegality in this order and, therefore, the revision is dismissed. Stay order, if any, stands vacated.