

(2024) 05 J&K CK 0057

In the Jammu And Kashmir High Court

Case No : Criminal Miscellaneous Case (M) No. 562 Of 2023

Vinod Kumar

APPELLANT

Vs

Somi Devi And Others

RESPONDENT

Date of Decision : 31-05-2024

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 156(3), 165(3), 200
Indian Penal Code, 1860 — Section 304A, 336

Citation : (2024) 05 J&K CK 0057

Hon'ble Judges : Rajnesh Oswal, J

Bench : Single Bench

Advocate : Kousal Parihar, Siddhant Gutpa, Mohd Irfan

Final Decision : Disposed Of

Judgement

Rajnesh Oswal, J

1. With the consent of the learned counsels for the contesting parties, the matter is taken up for final disposal.

2. Through the medium of present petition, the petitioner has impugned the order dated 10.06.2023 passed by the learned Chief Judicial Magistrate, Kishtwar in an application under section 156(3) Cr. P.C. titled, "Somi Devi vs. Vinod Kumar" filed by the respondent No.2, by virtue of which the learned Magistrate has directed the SHO, Police Station, Dachhan to register an FIR. The petitioner has also sought the quashing of FIR No. 11 of 2023, under Section 336/304-A IPC registered with Police Station Dachhan pursuant to the order dated 10.06.2023 passed by the learned CJM, Kishtwar.

3. Order dated 10.06.2023 passed by the learned Chief Judicial Magistrate, Kishtwar has been impugned by the petitioner on the ground that when an application under Section 165(3)Cr.P.C was filed by the respondent No. 1/ complainant before the learned Chief Judicial Magistrate, Kishtwar, the learned Magistrate recorded the statement of the complainant under Section 200 Cr. P.C.

and after recording of the statement, directed the SHO, Police Station, Dachhan to register FIR under Section 156(3) Cr. P.C.

4. Mr. Koushal Parihar, learned counsel for the petitioner has submitted that once the learned Magistrate has recorded the statement of the complainant under Section 200 Cr. P.C, the direction under Section 156(3) Cr.P.C. to the Police for registration of the FIR could not have been issued.

5. On the other hand, Mr. Siddhant Gupta, learned counsel for the petitioner No. 1 has conceded that after recording the statement of complainant, direction under Section 156(3) Cr. P.C. could not have been issued for registration of FIR

6. Heard learned counsel for the parties and perused the record.

7. A perusal of the record reveals that the respondent No. 1 filed an application under section 156(3) Cr. P.C. before the Chief Judicial Magistrate, Kishtwar on 10.06.2023 and on the same date, the statement of the complainant was recorded. After the statement of the complainant was recorded, the learned Chief Judicial Magistrate, Kishtwar by one line order, directed the SHO, Police Station, Dachhan to register FIR under Section 156 (3) Cr. P.C.

8. Section 200 Cr. P.C. provides that a Magistrate taking cognizance of an offence on complaint shall examine the complainant upon oath and the witnesses present, if any, and the substance of such examination shall be reduced in writing and shall be signed by the complainant and the witnesses and also by the Magistrate.

9. In the present case, the statement of the respondent No. 1/complainant has been recorded in terms of Section 200 Cr. P.C, meaning thereby that the Magistrate has proceeded to take cognizance of an offence as alleged by the respondent No. 1 in the complaint. Once the learned Magistrate has proceeded to record preliminary statement of the complainant then direction under Section 156(3) Cr. P.C. for registration of FIR cannot be issued as the same can be issued only at a pre-cognizance stage. It would be apt to take note of the observations of the Hon'ble Supreme Court in the case of "M/S Sas Infratech Pvt. Ltd. Appellant(s) vs. The State of Telangana and anr.", Criminal Appeal No.2574/2024 decided on 14.05.2024, which are as under:

"In view of the above, it is clear that when the Magistrate in exercise of his judicial discretion directs investigation under Section 156(3) of Cr. P.C., he cannot be said to have taken cognizance of any offence. It is only when the Magistrate after applying his mind prefers to follow the procedure under Chapter XV of Cr.P.C. by resorting to Sections 200, he can be said to have taken cognizance of the offence."

(emphasis added)

10. In view of the above, order dated 10.06.2023 passed by the Chief Judicial Magistrate, Kishtwar as well as FIR registered pursuant to the order impugned

are not sustainable in the eyes of law. Accordingly, the order impugned dated 10.06.2023 passed by the learned Chief Judicial Magistrate, Kishtwar and FIR No. 11 of 20023 of Police Station, Dachhan are quashed. The learned Chief Judicial Magistrate, Kishtwar is directed to proceed ahead with the complaint in accordance with law. However, it is made clear that the accused has no right of hearing before issuance of process.

11. Disposed of.