

**(2007) 03 AHC CK 0118**

**Allahabad High Court**

**Case No:** None

Smt. Sumitra Devi

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

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**Date of Decision:** March 19, 2007

**Acts Referred:**

- Constitution of India, 1950 - Article 226, 227
- Criminal Procedure Code, 1973 (CrPC) - Section 154, 156, 161, 162, 173
- Penal Code, 1860 (IPC) - Section 120B, 147, 302, 452

**Hon'ble Judges:** Poonam Srivastava, J

**Bench:** Single Bench

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**Judgement**

Poonam Srivastava, J.

The respondent Nos. 5, 6, 7 and 8 are proposed accused. Counsel for the petitioner made a request for granting permission to delete name of the respondent Nos. 5, 6, 7 and 8 from array of the party. She is allowed to do so. The instant writ petition is being heard only against the State. Learned A.G.A. was allowed three weeks" time to file counter affidavit on 9.2.2007 but no counter affidavit has been filed so far. Since only legal question is to be decided, I proceed to hear the case.

2. Heard Smt. Swati Agrawal, learned Counsel for the petitioner and learned A.G.A. for the State.

3. The orders impugned in the instant writ petition are dated 4.6.2006 passed by Chief Judicial Magistrate, J. P. Nagar, confirmed in revision on 22.12.2006 by the District and Sessions Judge. J.P. Nagar, rejecting the application on behalf of the petitioner u/s 156(3) Cr.P.C.

4. Facts giving rise to the dispute are that the daughter of the petitioner Smt. Sunita and her grand-daughter Km. Annu were killed. The petitioner"s son moved an application before the D.I.G. Moradabad Division Moradabad and the I.G. Police

Bareilly but all efforts failed to yield any result. Aggrieved by the non-cooperation of the police authority, an application u/s 156(3) Cr.P.C. was preferred before the Chief Judicial Magistrate on 25.8.2006. It was brought to the notice of the Magistrate that brother-in-law of the deceased, Suresh Chandra Pal lodged First Information Report at case crime No. 633 of 2006 against seven accused. The petitioner apprised the Magistrate about the fact that the crime was committed by the brother-in-law himself but the F.I.R. was registered against other person only with an intention to shield himself. The prayer was for a direction to the S.H.O. Gajraula to register and investigate the matter. The application u/s 156(3) Cr.P.C. was rejected by the Magistrate vide order dated 4.9.2006 on the basis of police report that a report is already in existence registered at case crime No. 633 of 2006 under Sections 147, 452, 302, 120B I.P.C. and charge sheet has been filed by the police. The Chief Judicial Magistrate, J. P. Nagar passed an order that since a report was lodged regarding same incident, he was not competent to direct for registration of second F.I.R. The order dated 4.9.2006 rejecting the application u/s 156(3) Cr.P.C. was challenged in a criminal revision No. 146 of 2006, which was dismissed as well on the basis of principles laid down by the Apex Court in the case of [T.T. Antony Vs. State of Kerala and Others](#),

5. Learned Counsel for the petitioner has placed reliance on a subsequent decision of the Apex Court [Upkar Singh Vs. Ved Prakash and Others](#). It is submitted that the version given by the petitioner in her application u/s 156(3) Cr.P.C. is no doubt regarding the same incident i.e. murder of the daughter & grand-daughter but the accused are different, the allegations are also altogether changed from the version of the F.I.R. lodged by Suresh Chandra Pal. Thus, it is a counter version of the same occurrence. The counsel states that the first report was only with a view to camouflage the real facts and, therefore, the Magistrate's order is absolutely illegal and based on technicalities.

6. After hearing the respective counsels at length, it is apparent that the Apex Court analysed the principles laid down in the case of T.T. Antony (supra). For ready perusal, paragraph Nos. 15 and 16 of the case of Upkar Singh (supra) are quoted hereinbelow.

15. Having carefully gone through the above Judgment. We do not think that this Court in the said cases of T.T. Antony v. State of Kerala and Ors. has precluded an aggrieved person from filing a counter case as in the present case. This is clear from the observations made by this Court in the above said case of T.T. Antony v. State of Kerala and Ors. In paragraph 27 of the judgment wherein while discussing the scope of Sections 154, 156, and 173(2) Cr.P.C., this is what the Court observed:

In our view a case of fresh investigation based on the second or successive FIRs, not being a counter case filed in connection with the same or connected cognizable offences alleged to have been committed in the course of the same transaction and in respect of which pursuant to the first FIR either investigation is under way or final

report u/s 173(2) has been forwarded to the Magistrate, may be a fit case for exercise of power under Sections 482 Cr.P.C. or under Articles 226/227 of the Constitution.

[Emphasis supplied]

It is clear from the words emphasized hereinabove in the above quotation, this Court in the case of T.T. Antony v. State of Kerala and Ors. has not excluded the registration of a complaint in the nature of a counter case from the purview of the Code. In our opinion, this Court in that case only held any further complaint by the same complainant or others against the same accused, subsequent to the registration of a case, is prohibited under the Code because an investigation in this regard would have already started and further complaint against the same accused will amount an improvement on the facts mentioned in the original complaint, hence will be prohibited u/s 162 of the Code. This prohibition noticed by this Court, in our opinion does not apply to counter complaint by the accused in the 1<sup>th</sup> complaint or on his behalf alleging a different version of the said incident.

7. The Apex Court, while interpreting law in the case of T.T. Antony deciding the case of Upkar Singh, placed reliance on another decision Kari Choudhary v. Mst. Sita Devi and Ors. 2001 ACC 689 (SC) The view expressed by Hon"ble Supreme Court is absolutely clear that the provision of the Code does not take away jurisdiction of the Magistrate u/s 156(3) Cr.P.C. even after submission of a report by the Investigating Officer to direct for registering a counter case in respect of the same occurrence. If the case of T.T. Antony was to be accepted as holding second complaint or counter case regarding the same incident to be prohibited then such a conclusion would lead to serious consequences. The Apex Court neither considered nor expressed its view regarding legal right of the aggrieved person to file a counter case in given fact of the circumstances, where First Information Report, first in time was lodged against some persons as a result of conspiracy to shield the actual offender. When application u/s 156(3) Cr.P.C. is moved before the Magistrate setting up a counter case, it is the bounden duty of the Magistrate to examine the allegation and come to a conclusion instead of adopting a hyper-technical view that the jurisdiction to examine different version is completely lacking and hit by Sections 161 and 162 of the Code. Facts of the case of T.T. Antony was somewhat absolutely different and, therefore, it cannot be treated laying down a complete bar for institution of a rival version bringing to book the actual accused, who appear to be involved in the crime. Paragraph No. 19 of decision of Upkar Singh (supra) is quoted below:

19. This clearly shows that if concerned police refused to register a counter complaint, it is open to the Magistrate at any stage to direct the police to register the complaint brought to his notice and investigate the same.

8. In the instant case, admittedly brother-in-law Suresh Chandra Pal is complainant in case crime No. 633 of 2006, whereas the petitioner made specific allegation in

respect of murder of her daughter and grand-daughter against Suresh Chandra Pal (brother-in-law) and, therefore, it is evident that version given by the petitioner is a counter version of the incident, which requires independent investigation and the petitioner cannot be shut out from making a report regarding murder of the deceased and bring the actual assailants involved in a double murder. Specific motive, reasons and circumstances have been detailed in the application u/s 156(3) Cr.P.C. The Magistrate declined even to examine allegations of the counter version and adopted a hyper-technical view.

9. On perusal of the order of the Magistrate, it transpires that the order has been passed mechanically without even examining the application u/s 156(3) Cr.P.C., which reveals that the brother-in-law used to stay with the deceased after husband of the deceased died and all along pressurized the deceased to have relations with him. The advances made by him was constantly denied by the deceased Smt. Sunita, which led to the commission of the crime. Circumstantial evidence of witness Promod, who was with Suresh Chandra Pal to the effect that he heard him talking with accused Kripal that he has done away the two females Smt. Sunita Pal and her daughter Annu. The revisional court refused to direct for registration and investigation, which could not be done in the circumstances of the present case. In fact, counsel for the petitioner emphasized before the revisional court that the brother-in-law Suresh Chandra Pal implicated innocent persons in the instant case only with a view to mislead the police and since he has been successful in getting charge sheet filed, the courts should not have turned a deaf ear, at least the petitioner was entitled for a proper investigation of the allegations.

10. In the circumstances, order dated 4.6.2006 passed by the Chief Judicial Magistrate, J. P. Nagar, confirmed in revision by the District & Sessions Judge, J.P. Nagar, vide judgment and order dated 22.12.2006 refusing the petitioner to get the matter registered and investigated on the basis of an application u/s 156(3) Cr.P.C. at the instance of the petitioner is not sustainable in law. The impugned orders dated 4.6.2006 and 22.12.2006 are hereby quashed.

11. The matter is remanded to the concerned Magistrate to pass afresh order after taking entire aspect into consideration, and giving an opportunity of hearing to the petitioner within a period of three weeks from the date a certified copy of this order is produced before him.

12. With the aforesaid direction, the writ petition is disposed of.