

(2005) 03 AHC CK 0121

Allahabad High Court

Case No: Criminal Miscellaneous Writ Petition No. 2689 of 2005

Kamal

APPELLANT

Vs

State of U.P., Birmi,
Tara Chand, Digambar
and Inder

RESPONDENT

Date of Decision: March 15, 2005

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) â€” Section 156(3)

Citation: (2005) 03 AHC CK 0121

Hon'ble Judges: Ravindra Singh, J

Bench: Single Bench

Advocate: R.B. Saxena, for the Appellant; A.G.A., for the Respondent

Final Decision: Disposed Of

Judgement

Ravindra Singh, J.

Heard Sri R.B. Saxena learned counsel for the petitioner and learned A.G.A.

2. This petition is filed against the order dated 28.7 2004 passed by the learned Judicial Magistrate, Chhata, district Mathura, whereby the protest

petition filed by the petitioner was rejected and the final report submitted by the I.O. was accepted and the order dated 2.2.2005 passed by the

learned Sessions Judge, Mathura in Criminal Revision No. 692 of 2004, whereby the revision filed by the petitioner was dismissed.

3. It is contended by learned counsel for the petitioner that the petitioner moved an application u/s 156(3) Cr. P. C, which was allowed by the

Judicial Magistrate, Chhata, Mathura. In pursuance of that order the F.I.R. was lodged and the matter was investigated by the police. Thereafter,

the I.O. submitted final report. The petitioner filed protest petition against that final report. After considering the police report the learned

Magistrate came to conclusion that the fair investigation was not done so the learned Magistrate passed the order for doing further investigation,

but the I.O. again submitted final report, which was accepted by the learned Magistrate on 28.7.2004 and the protest petition filed by the

petitioner was rejected.

4. It is contended by the learned counsel for the petitioner that the impugned order dated 28.7.2004 is illegal, because if the learned Magistrate

was not satisfied on the police report, in such circumstances the protest petition filed by the petitioner would have been treated as a complaint but

the learned Magistrate did not treat the protest petition as a complaint, so he passed illegal order. The learned Sessions Judge also did not consider

the manifest error committed by the learned Magistrate and dismissed the revision filed by the petitioner.

5. It is opposed by the learned A.G.A. by submitting that there is no illegality or irregularity in the impugned orders because both the orders are

well reasoned.

6. In view of the facts and circumstances of the case and the submissions made by the learned counsel for the petitioner it appears that the matter

was investigated and the final report was submitted. Against that final report the protest petition was filed by the petitioner after considering the

same, but the learned Magistrate passed the order for doing further investigation. Again after doing further investigation the final report was

submitted, which was accepted by the learned Magistrate and protest petition filed by the petitioner was rejected. In such circumstances it. was

not proper for the learned Magistrate to reject the protest petition because the investigation was not fair enough. The protest petition filed by the

petitioner would have been treated as a complaint, so the impugned order dated 28.7.2004 rejecting the protest petition is set aside.

Consequently, the order dated 2.2.2005 passed by the learned Sessions Judge, Mathura in respect of rejection of the protest petition, is set aside

and the learned Judicial Magistrate, Chhata, Mathura is directed to treat the protest petition filed by the petitioner as a complaint and to proceed

further as a complaint case in accordance with the provision of law.

7. With this observation the petition is finally disposed of.