(2007) 06 AHC CK 0038

Allahabad High Court

Case No: Criminal Miscellaneous Writ Petition No. 7762 of 2007

Nand Lal and Others	APPELLANT
Vs	
Rani Devi	RESPONDENT

Date of Decision: June 14, 2007

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 156(3)

Hon'ble Judges: Vinod Prasad, J

Final Decision: Dismissed

Judgement

Vinod Prasad, J.
Heard learned Counsel for the petitioners at length and the learned A.G.A.

2. The order under Section 156 (3) Cr.P.C. was passed by the Magistrate on 2262006 on the application filed by respondent wherein she alleged that she is the wife of the applicant Nand Lal and she was tortured because of the illegal demand of dowry and was assaulted. Magistrate exercising powers under Section 156(3) Cr.P.C. ordered for registration of the F.I.R. And investigation of the offences. The said order was challenged by filing a revision by the present applicants, who are accused in the aforesaid case. The lower revisional Court dismissed their revision vide order dated 1652007 by holding that the revision at the instance of those persons who are accused of cognizable offence is not maintainable in view of the law laid down by this Court in the case of Rakesh Puri and Ors. v. State of U.P. and Ors., 2006 (56) A.C.C. 516. Hence this writ petition.

3. Learned Counsel for the petitioners contended that respondent No. 2 is not his wife and on the date of the alleged marriage the husband Nandlal was at Chennai. He further contended that fraud has been committed on the petitioners and no offence at all is made out against them. He has, therefore, submitted that the order for registration of the F.I.R. be quashed.

4. Learned A.G.A. on the contrary supported the order and contended that the order is a reasoned one.

5. I have considered the submissions raised by both the sides. The Apex Court not once but time and again reiterated the law that at the stage of Section 156 (3) the Magistrate has got no right to go into the merits of the allegations, legality or illegality, probability or improbability of the allegations levelled. Reference in this connection may be made to the case of State of Haryana v. Ch. Bhajan Lal, 1990(2) JIC 997 (SC) : (1992) SCC (Crl) 462 paragraphs 30, 31, 33. The said law was reiterated by the Apex Court in the case of Superintendent of Police C.B.I. v. Tapan Kumar Singh, 2001(1) JIC 174 (SC). Recently the Apex Court has, reaffirmed and reiterated the said law in the case of Ramesh Kumari v. State (NCT of Delhi), 2006(2) JIC 671 (SC) : AIR 2006 SC 1322. In such a view the contention of the learned Counsel for the applicants that the Magistrate, was required to meticulously appreciate the allegations levelled in the application under Section 156 (3) Cr.P.C. cannot be accepted at all as the said contention is against the law laid down by the Apex Court in the aforesaid judgments.

6. The petitioners have got all the rights available to them before Investigating Officer. F.I.R. of a cognizable offence cannot be stalled from being registered and from being investigated. The accused has got no right to be heard at this stage. It has been held by the Apex Court in the case of Union of India v. W.N. Chchadha, 1993 SCC (Crl.) 171, that before being summoned the accused cannot be heard at all. This is the law of land.

7. In view of the aforesaid observations this writ petition is misconceived and is accordingly dismissed.