
Smt Kavita Vs State of U.P. and Others

Application U/S 482 No. 30324 of 2010

Court: Allahabad High Court

Date of Decision: Sept. 27, 2010

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) " Section 154(3), 156(3), 200, 202, 202(1)#Evidence Act, 1872 " Section 27

Hon'ble Judges: Rajesh Dayal Khare, J

Bench: Single Bench

Final Decision: Dismissed

Judgement

Rajesh Dayal Khare, J.

The present application has been filed for quashing the order dated 19.8.2010 passed by Additional Chief Judicial

Magistrate II, Bijnor in misc. case No. 1349 of 2010 u/s 156(3), Cr.P.C. whereby, after calling for police report, the Magistrate directed that the

application of the applicant be treated as complaint case.

2. It is contended by the learned Counsel for the applicant that till date statement u/s 202, Cr.P.C. has not been recorded.

3. It is contended by the learned Counsel for the applicant that when no first information report was lodged by the police with regard to

commission of cognizable offence, the applicant filed application u/s 156(3), Cr.P.C. before the court, who, after calling the police report, treated

the same as complaint case. It is further contended that order impugned has given long rope to the police to refuse to register of first information

report of cognizable offence and further the Magistrate was approached by the applicant with a sole prayer to direct the police to register the case

and investigate the same, as it disclosed the commission of a cognizable offence, therefore the Magistrate has no power to pass the order

impugned. It is also contended that the Magistrate does not have any power of investigation and consequently he also lacks all ancillary powers to

decide whether the investigation in a cognizable offence is required or not and power to investigate the cognizable offence is vested with the police.

Learned Counsel has relied upon a Judgment of Hon"ble Apex Court in the case of Lalita Kumari v. Government of Uttar Pradesh and Ors.

reported in (2008) 3 SCC (Cri) 17 wherein Hon"ble Apex Court had issued general direction in the cases where first information report was not

lodged or where the first information report was lodged on court"s direction, the apathy of police is to investigate the matter, as such, the Hon"ble

Apex Court had issued stringent directions pinning responsibility on police authorities to act promptly or else to face contempt/disciplinary

proceedings including suspension. Learned Counsel has further relied upon a Judgment in the case of Mobin v. State of U.P. and Ors. reported in

(55) 2006 ACC 757 in which this Hon"ble Court has held that when the injury report and X-ray report make out a cognizable offence, then matter

may be remanded back to the court below to decide the application filed u/s 156(3), Cr.P.C. afresh. Learned Counsel has further placed reliance

upon a Judgment of this Court in the case of Gulab Chand Upadhyaya v. State of U.P. and Ors. reported in (44) 2002 ACC 670, in which this

Court has held as follows:

The scheme of Cr.P.C. and the prevailing circumstances require that the option to direct the registration of the case and its investigation by the

police should be exercised where some ""investigation"" is required, which is of a nature that is not possible for the private complainant, and which

can only be done by the police upon whom State has conferred the powers essential for investigation, for example.

(1) where the full details of the accused are known to the complainant and the same can be determined only as a result of investigation, or

(2) where recovery of abducted person or stolen property is required to be made by conducting raids or searches of suspected places or persons,

or

(3) where for the purpose of launching a successful prosecution of the accused evidence is required to be collected and preserved. To illustrate by

example cases may be visualised where for production before Court at the trial (a) sample of blood soaked soil is to be taken and kept sealed for

fixing the place of incident; or (b) recovery of case property is to be made and kept sealed; or (c) recovery u/s 27 of the Evidence Act; or (d)

preparation of inquest report; or (e) witnesses are not known and have to be found out or discovered through the process of investigation.

But where the complainant is in possession of the complete details of all the accused as well as the witnesses who have to be examined and neither

recovery is needed nor any such material evidence is required to be collected which can be done only by the police, no ""investigation"" would

normally be required and the procedure of complaint case should be adopted. The facts of the present case given below serve as an example. It

must be kept in mind that adding unnecessary case to the diary of the police would impair their efficiency in respect of cases genuinely requiring

investigation. Besides even after taking cognizance and proceeding under Chapter XV the Magistrate can still u/s 202(1) Cr.P.C. order

investigation, even though of a limited nature.

4. Learned A.G.A. has submitted that the order impugned, in the present application, has been passed after considering entire facts and evidence

on record which suffers from no illegality or infirmity in law and calls no interference by this Court u/s 482, Cr.P.C. Learned A.G.A. has relied

upon a Judgment of Hon"ble Apex Court in the case of Sakiri Vasu Vs. State of U.P. and Others, in which Hon"ble Supreme Court has held that

caution should be exercised by the High Court in the matter which relates to non-registration of first information report or improper investigation. It

was held that High Court should discourage writ petitions or petitions u/s 482, Cr.P.C. where alternative remedies u/s 154(3) read with Section 36

or Section 156(3) or Section 200 Cr.P.C. have not been exhausted. Learned A.G.A. has also referred a Division Bench decision of this Court in

the case of Sukhwasi v. State of Uttar Pradesh, reported in (59) 2007 ACC 739 wherein this Court has held that the Magistrate is not bound to

order registration of a first information report in all cases where a cognizable offence has been disclosed and the Magistrate has authority to treat it

as complaint.

5. Heard learned Counsel for the applicant and learned A.G.A. for the State respondent.

6. Perused the material on record as well as the order impugned.

7. The Magistrate, after calling police report on an application moved u/s 156(3), Cr.P.C. by the applicant, and after perusing the evidence on

record, directed that the same may be treated as complaint case. The discretion of the Magistrate to decide the application u/s 156(3), Cr.P.C.

cannot be taken away. Thus, this Court is of the view that the order impugned does not suffer from any infirmity in law, which may warrant any

interference by this Court in exercise of powers u/s 482, Cr.P.C.

8. The application lacks merit and is, accordingly, dismissed at this stage. Order Date: