

(2000) 01 AHC CK 0185

Allahabad High Court

Case No: Criminal Misc. Application No. 1640 of 1998

Kanhaiya Lal

APPELLANT

Vs

State of U.P. and Another

RESPONDENT

Date of Decision: Jan. 27, 2000

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 156(3), 199

Citation: (2000) CriLJ 3886 : (2000) 3 RCR(Criminal) 672

Hon'ble Judges: S.K. Agarwal, J

Bench: Single Bench

Advocate: Promod Bhardwaj, for the Appellant; A.G.A., A.K. Awasthi, Manish Tewari and V.C. Tewari, for the Respondent

Final Decision: Allowed

Judgement

@JUDGMENTTAG-ORDER

S.K. Agarwal, J.

Heard learned counsel for the applicant and Shri A.K. Awasthi, learned counsel for the opposite party.

2. The sole contention raised before this Court by Shri Pramod Bhardwaj, learned counsel for the applicant, is that the Magistrate was wholly incompetent to direct the police to register the case for investigation, on an application made before him u/s 156(3), Cr.P.C. for an offence which was punishable under Chapter XXI. The source of raising such an argument is provision contained, in Section 199, Cr.P.C. Section 199 of the Cr.P.C. contains as under :

Prosecution for defamation - No Court " shall take cognizance of an offence punishable under Chapter XXI of the Indian Penal Code (45 of 960) except upon a complaint made by some person aggrieved by the offence. Proviso appended to this provision which provides for a complaint by some other persons only if the

aggrieved person is under the age of eighteen years, or is an idiot or a lunatic, or suffers from such ailment or infirmity that makes him unable to make a complaint himself or is a women who, according to the local customs and manners, ought not to be compelled to appear in public.

3. Thus reading these two clauses together there remains no doubt that this provision, Section 199 of Cr.P.C. intends to bar any FIR or any consequent investigation and submission of charge sheet in any Court by the police. Such grievance can be raised by an aggrieved party through a private complaint alone.

4. The intention of the legislature is very clear. In enacting the bar the legislature has borne in mind the fact that such complaints generally are launched with vested and mostly malicious interests. The bar imposed on cognizance by the Courts is to curb any vexatious prosecution of any person for an offence falling under Chapter XXI, Apart from it any defamatory act against another person by an individual basically gives rise to an obligation under civil law mainly under law of torts. Its notice is individual. The injury suffered by such individual is notional and generally affects him in his repute, honour and prestige. It hurts him in mind. It is not an offence against the society in general. Therefore, the framers of law have decided to keep it out of the purview of the investigation by police. The bar though is implied but is very clearly discernible. The above said intention of the legislation cannot be frustrated by taking recourse to the provision of Section 156(3), Cr.P.C. No Magistrate is authorised or entitled to direct investigation in view of the categorical bar imposed by the provisions of Section 199, Cr.P.C. upon exercise of any such power. If the Magistrate is not entitled to take any cognizance of an offence falling under Chapter XXI of the said Code on a charge sheet then how can he direct an investigation as well. The only course under the law open to an aggrieved person to satiate his grievance is to file a complaint against his offender.

5. In the circumstances no court is competent to take recourse to the provision of Section 156(3), Cr.P.C. for any offence falling under Chapter XXI.

6. In view of the above discussion this revision is allowed. The order passed in Criminal Revision No. 162 /96 (Kanhai Lal v. State) on 28-3-1998 as well as the order passed by the Chief Judicial Magistrate concerned on 13-12-1996 are hereby quashed. No investigation shall follow.