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**(2000) 05 AHC CK 0196**

**Allahabad High Court**

**Case No:** Criminal Miscellaneous Application No. 722 of 2000

Smt. Anisa and Others

APPELLANT

Vs

State of U.P. and Another

RESPONDENT

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**Date of Decision:** May 9, 2000

**Acts Referred:**

- Criminal Procedure Code, 1973 (CrPC) - Section 156, 156(3), 190
- Dowry Prohibition Act, 1961 - Section 3, 4
- Penal Code, 1860 (IPC) - Section 323, 498A

**Citation:** (2000) CriLJ 4524 : (2000) 4 RCR(Criminal) 419

**Hon'ble Judges:** B.K. Rathi, J

**Bench:** Single Bench

**Advocate:** Sunil Kumar, for the Appellant; R.P. Singh and A.G.A., for the Respondent

**Final Decision:** Allowed

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**Judgement**

@JUDGMENTTAG-ORDER

B.K. Rathi, J.

The opposite party No. 2 moved an application u/s 156(3), Cr.P.C. before the Additional Chief Judicial Magistrate, Khurja to direct the police of police station Poham to register the case for offences under Sections 323, 498-A, I.P.C. and 3/4 D.P. Act against the applicants. That application was rejected by Additional Chief Judicial Magistrate. Khurja by order dated 28-8-1999. The opposite party No. 2 preferred Criminal Revision No. 458 of 1999 against that order, which have been allowed by the Sessions Judge, Bulandshahr by order dated 17-12-1999. Against that order the present revision has been preferred by the accused nominated in the F.I.R.

2. I have heard Sri Sunil Kumar, learned counsel for the applicants, Sri R. P. Singh for the opposite party No. 2 and the learned A.G.A.

3. It has been contended by the learned counsel for the applicants that the order of the Sessions Judge, Bulandshahr is without jurisdiction. Section 156, Cr.P.C. is in Chapter XII which relates to information to the police and their powers to investigate. Section 156, Cr.P.C. deals with police officer's powers to investigate cognizable case. Clause (3) of Section 156, Cr.P.C. reads as follows :

Any Magistrate empowered u/s 190 may order such an investigation as mentioned above.

4. Section 190, Cr.P.C. provides that taking of cognizance of offences by the Magistrate. In such matters where cognizance can be taken by the Magistrate u/s 190, Cr.P.C. he had power to pass an order u/s 156(3), Cr.P.C. Sessions Judge who has no power to take cognizance of offence u/s 190, Cr.P.C. has also no power to pass an order under Clause (3) of Section 156(3), Cr.P.C.

5. The result therefore, is that the order of the learned Sessions Judge allowing the application u/s 156(3), Cr.P.C. and directing the police to register the case on the basis of the application and to investigate the same is without jurisdiction and is liable to be quashed. The proper course open to the learned Sessions Judge was to issue necessary directions to the Magistrate for passing an order u/s 156(3), Cr.P.C.

6. In view of the above discussion, the application is allowed and the impugned order of the Sessions Judge, Bulandshahr dated 17-12-1999 is quashed. However, the matter is sent back to the learned Sessions Judge, Bulandshahr, who may pass proper order in the Criminal Revision No. 458 of 1999 in the light of the discussion made in the body of the judgment.