

(2007) 11 AHC CK 0149

Allahabad High Court

Case No: None

Nathoo Lal Gangwar

APPELLANT

Vs

State of Uttar Pradesh and
Pramod Kumar alias Pramod

RESPONDENT

Date of Decision: Nov. 20, 2007

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 156(3), 482
- Penal Code, 1860 (IPC) - Section 302, 504

Hon'ble Judges: M.K. Mittal, J

Bench: Single Bench

Final Decision: Dismissed

Judgement

M.K. Mittal, J.

This application has been filed u/s 482 Cr.P.C. for quashing the order dated 8.12.2006 passed by C.J.M., Bareilly in Criminal Misc. Case No. 609 of 2006 Nathoo Lal Gangwar v. Pramod u/s 156(3) Cr.P.C. P.S. Sheesgarh District Bareilly whereby learned Magistrate directed to register the application as a complaint case u/s 200 Cr.P.C.

2. Heard Sri A.K. Sachan, learned Counsel for the applicant, learned A.G.A. and perused the material on record.

3. Brief facts of the case are that applicant filed an application u/s 156(3) Cr.P.C. that Master Lalta Prasad son of Bhairav Prasad was murdered by his own son Pramod in the night of 21/22-5-22005 in village Valli within the limits of P.S. Sheeshgarh, District Bareilly, when he was sleeping in his house. According to applicant Pramod did this act in order to get the service in place of his father and also to get the gratuity and fund amount. Applicant also contended that at the time of alleged incident villagers had collected at the place of occurrence and they heard the deceased saying that his son had not done the good work and that he did not even

want to see his face. Applicant also alleged that Pramod Kumar in collusion with others had filed the first information report against him and his brother in law and in that matter case was registered at Crime No. 275 of 2005 under Sections 302, 504 IPC. This application u/s 156(3) Cr.P.C. was filed on 20.11.2006 i.e. after more than one and half years of the alleged incident. Learned Magistrate after considering the application held that the applicant had exaggerated the facts and instead of directing for registration of the first information report directed that the case be registered as a complaint case. He also placed reliance on the full bench Judgment of this Hon"ble Court in the case of Ram Babu Gupta v. State of U.P. 2001 (2) A.Cr.R. page 1350. Feeling aggrieved this application has been filed.

4. Learned Counsel for the applicant has contended that if application is filed u/s 156(3) Cr.P.C. the magistrate is bound to direct for registration of the case and in the instant matter magistrate has erred in directing for registration of the case as complaint case. In support of his contention, learned Counsel for the applicant has cited the cases of Lal Chandra Nishad v. State of U.P. (LVII) 2007 ACC 46, Om Singh v. State of U.P. (LVII) 2007 ACC 521 and Phool Singh v. State of U.P. (LIX) 2007 ACC 26. In these cases, Hon"ble Vinod Prasad, J of this Court has held that if an application u/s 156(3) Cr.P.C. is filed and cognizable offence is made out it is the legal duty of the Magistrate to direct for registration of the first information report.

5. Learned A.G.A. to the contrary has contended that the law has not been correctly laid down in these judgments and the provisions of Section 156(3) Cr.P.C. have not been correctly appreciated and the applicant cannot get any benefit out of these judgments. Learned A.G.A. has also contended that these judgments are not in consonance with the law as laid down by the Hon"ble Apex Court as well as by full bench of this Court in the case of Ram Babu (Supra).

6. The provisions regarding the lodging of a report by an aggrieved person in a cognizable or non cognizable case and the investigation thereof have been given in Sections 154, 155 and 156 Cr.P.C. In Sections 154 and 155 Cr.P.C. the word "Shall" has been used and it is the statutory duty of the station In-charge to get the substance entered in the book as prescribed. The Station Officer is authorised to investigate the cognizable case himself honestly whereas he needs the permission of the court to investigate a non cognizable case. Even if one of the offence is cognizable he can do the investigation without the permission of the court.

7. If any application is filed u/s 156(3) Cr.P.C. and a cognizable offence is made out from the allegations made therein the Magistrate empowered u/s 190 Cr.P.C. can direct for investigation of the case as is done u/s 156(1) Cr.P.C. But in case he finds that there is nothing particular which requires investigation by the police, he can certainly direct that application be treated as complaint and can proceed under chapter 15 of the Criminal Procedure Code.

8. Section 2(d) of the Criminal Procedure Code defines complaint as under-

Complaint means any allegation made orally or in writing to a Magistrate, with a view to his taking action under this Code, that some person, whether known or unknown has committed an offence but does not include a police report.

Explanation- A report made by a police officer in a case which discloses, after investigation, the commission of a non-cognizable offence shall be deemed to be a complaint; and the police officer by whom such report is made shall be deemed to be the complainant;

9. Therefore, if any allegations are made in writing to the Magistrate with a view to his taking action under this Code it can be treated as a complaint. The application u/s 156(3) Cr.P.C. is filed before a Magistrate with allegations and he can certainly treat it as a complaint.

10. In case of Ram Babu Gupta (Supra) it has been held as under:

Coming to the second question noted above, it is to be at once stated that a provision empowering a court to act in a particular manner and a provision creating a right for an aggrieved person to approach a court or authority, must be understood distinctively and should not be mixed up. While sections 154, 155, Sub-section (1) and (2) of 156 Cr.P.C. confer right on an aggrieved person to reach the police, 156(3) empowers a Magistrate to act in a particular manner in a given situation. Therefore, it is not possible to hold that where a bare application is moved before court only praying for exercise of powers u/s 156(3) Cr.P.C. it will remain an application only and would not be in the nature of a complaint. It has been noted above that the Magistrate has to always apply his mind on the allegations in the complaint where he may use his powers u/s 156(3) Cr.P.C. In this connection, it may be immediately added that where in an application, a complainant states facts which constitute cognizable offence but makes a defective prayer, such an application will not cease to be a complaint nor can the magistrate refuse to treat it as a complaint even though there be no prayer seeking trial of the known or unknown accused. The Magistrate has to deal with such facts as constitute cognizable offence and for all practical purposes even such an application would be a complaint.

11. This Court in the case of [Yogendra Singh Vs. The State of U.P. and Others](#), has held that application filed u/s 156(3) Cr.P.C. can be treated as complaint u/s 200 Cr.P.C. and no separate complaint is required to be filed.

12. In the case of Joseph Mathuri @ Vishveswaranand and Anr. v. Swami Sachchidanand Harisakshi and Anr. 2001 (3) Crime 384 (SC), the application was moved by the complainant u/s 156(3) Cr.P.C. before the Magistrate for directing the police to register the case against the appellant. In that matter Hon"ble Apex Court has held that there was nothing wrong if the application was directed to be treated as complaint.

13. In a recent division bench case of Sukhwasi v. State of U.P. 2007 (9) ADJ , it has been held by this Court that Magistrate has authority to treat an application u/s 156(3) Cr.P.C. as complaint. In this division bench case also a Judgment rendered by Hon"ble Vinod Prasad, J was under reference.

14. If a person is aggrieved and sets into motion the machinery for prosecuting the wrong doers, he can file a report at the police station or can present an application (complaint before the Court). If his report is not written at the police station he has again an option to file a complaint in the Court. Simply on the ground that application u/s 156(3) Cr.P.C. discloses cognizable offence the Magistrate is not required to direct for registration of the case. Normally an application u/s 156(3) Cr.P.C. is presented with the legal assistance and in the circumstances the allegations disclosing a cognizable offence are bound to be there. Therefore, merely on this ground the Magistrate cannot be directed to direct the police to register the case. The Magistrate has also to consider if any investigation is required by the police as is done u/s 156(1) Cr.P.C. The words used in Section 156(3) Cr.P.C. are as under:

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

15. The word used is may and not shall. The Magistrate is expected to exercise his judicial discretion as in all the cases police investigation may not be required even where the allegations may disclose a cognizable offence as there may be nothing to be investigated by the police, reference 1 Gulab Chandra Upadhyay v. State of U.P. (XLIV) 2002 ACC 670 (Allahabad I HC)]. However if cognizable offence is disclosed, the case cannot be thrown out at the initial stage. In this case the applicant does not claim any personal knowledge of the incident and his allegation are based on hearsay evidence.

16. Under the Criminal Procedure Code two procedures have been provided that of State case and the Complaint case. But the net result is same that is conviction or acquittal including discharge.

17. Therefore the contention of the learned Counsel for the applicant that if cognizable offence is made out from the allegations a Magistrate is bound to direct for registration of the case is not correct and cannot be accepted.

18. The right of the complainant to get the case registered for investigation can be considered from another angle also. According to the complainant as alleged in the application u/s 156(3) Cr.P.C. the co accused and other witnesses gave affidavits to the police officers and his father also gave applications to Superintendent of Police and higher authorities but no action was taken and then he filed this application. In such a situation the right course for the complainant to adopt was to file a complaint u/s 200 Cr.P.C.

19. While considering the right of a person aggrieved by the police inaction in lodging the report, even in cognizable case, the full bench of the Hon"ble Apex Court in the case of [Aleque Padamsee and Others Vs. Union of India \(UOI\) and Others](#), has reiterated the legal position as was earlier stated in the cases of [All India Institute of Medical Sciences Employees' Union \(Regd.\) through its President Vs. Union of India \(UOI\) and Others](#), [Gangadhar Janardan Mhatre Vs. State of Maharashtra and Others](#), [Minu Kumari and Another Vs. The State of Bihar and Others](#), and [Hari Singh Vs. The State of U.P.](#),

20. The Apex Court has held as under-

6.4. When the information is laid down with the police but no action in that behalf is taken, the complainant can [under Section 190 read with Section 200 of the Code] lay the complaint before the Magistrate having jurisdiction to take cognizance of the offence and the Magistrate is required to enquire into complaint as provided in Chapter XV of the Code. In case the Magistrate after recording evidence finds a prima facie case, instead of issuing process to the accused, he is empowered to direct the police concerned to investigate into the offence under Chapter XII of the Code and to submit a report. If he finds that the complaint does not disclose any offence to take further action, he is empowered to dismiss the complaint u/s 203 of the Code. In case he finds that the complaint/evidence recorded prima facie discloses an offence, he is empowered to take cognizance of the offence and could issue process to the accused.

21. In the case of Ramesh Kumari v. State (NCT of Delhi) and Ors. (2006) 1 SCC 678, it was held by the Hon"ble Apex Court that when ever cognizable offence is disclosed police officials are bound to register the same and in case it is not done, direction to register the same can be given. But in the case of Aleque Padamsee (supra), this ruling has been distinguished and explained and it has been held that "the correct position in law, therefore, is that the police officials ought to register the FIR whenever facts brought to their notice show that cognizable offence has been made out. In case the police officials fail to do so the modalities to be adopted are as set out in Section 190 read with Section 200 of the Code. Therefore, the Magistrate cannot be held to be bound to direct for registration of case on every application filed u/s 156(3) Cr.P.C. otherwise this provision would result in harassment to innocent persons and become a tool for shrewd litigants.

22. Thus I come to the conclusion that learned Magistrate did not commit any illegality in directing that the application u/s 156(3) Cr.P.C. be treated as complaint case. The cases as cited by the learned Counsel for the applicant do not lay down the correct law in view of the above noted judgments of the Hon"ble Apex Court and this Court and they do not help the applicant. Thus I come to the conclusion that the application u/s 482 Cr.P.C. is devoid of merits and is liable to be dismissed and is hereby dismissed.