

(2010) 09 AHC CK 0562

Allahabad High Court

Case No: Application No. 29311 of 2010

Amir Singh

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

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**Date of Decision:** Sept. 20, 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

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**Judgement**

Rajesh Dayal Khare, J.

Heard learned Counsel for the applicant and learned A.G.A.

2. The present application u/s 482 Cr.P.C., has been filed for quashing the order dated 02.08.2010 passed by learned Additional Chief Judicial Magistrate, Court No. 3 District Ramabai Nagar (Kanpur Dehat), in Misc. Case No. Nil of 2010 Amir Singh v. Chandra Pal and Ors. whereby application u/s 156(3) Cr.P.C., filed by the applicant has been treated to be a complaint case.

3. It is contended by learned Counsel for the applicant that when no first information report lodged by the police with regard to commission of cognizable offence, the applicant filed an application u/s 156(3) Cr.P.C. before the Court concerned below, who treated the same as a Complaint Case. It is next contended that the order impugned has given long rope to the police to refuse to register of first information report of cognizable offence and further the applicant approached the Magistrate with sole prayer to direct the police to register the case and investigate the same, as it disclosed the commission of cognizable offence, therefore the Magistrate has no power to pass the order impugned and till date no statement u/s 200 and 202 Cr.P.C. has been recorded. It is also contended that

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) 3SCC (Cri) 17 wherein Hon"ble Apex Court had issued general direction in the cases where first information 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 complaint is in possession of the complete details of all the accused as well as the witness who have to be examined and neither recovery is needed nor any such material evidence is required to be collected which can only be done 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. He has further submitted that cognizable offence is made out. 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 nonregistration 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 U.P. 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.

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

7. The Learned Magistrate, after perusing the documents and evidence on records submitted by the applicant 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 of law, which may warrant any interference by this Court in exercise of powers conferred under 482 Cr.P.C., jurisdiction.

8. In view of the facts and circumstances of the case, prayer for quashing the order impugned is refused.

9. Accordingly, the application lacks merit and is dismissed at this stage.