

(2015) 04 AHC CK 0189

Allahabad High Court

Case No: Application No. 10610 of 2015

Rajesh Yadav

APPELLANT

Vs

State of Uttar Pradesh and
Others

RESPONDENT

Date of Decision: April 22, 2015

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 156(3), 397, 397(2), 482
- Penal Code, 1860 (IPC) - Section 419, 420, 467, 468, 471

Citation: (2015) 8 ADJ 140 : (2015) 4 ALJ 169

Hon'ble Judges: Vijay Lakshmi, J

Bench: Single Bench

Advocate: K.C. Pandey, for the Appellant

Final Decision: Allowed

Judgement

@JUDGMENTTAG-ORDER

Vijay Lakshmi, J

By means of this application u/S. 482, the applicant has challenged the validity and correctness of the order dated 04.02. 2015, passed by Sessions Judge, Mirzapur, whereby the learned Sessions Judge after hearing the revision filed by the opposite party Nos. 2 to 4 on the point of admission, has admitted the revision and has issued notice to the opposite party fixing 17.02.2015. Learned counsel for the applicant has submitted that in view of the clear legal position as laid by the Full Bench of this Court in the case of [Father Thomas Vs. State of U.P. and Another](#), (2011) 2 ACR 1457 : (2011) 1 ADJ 333 : (2011) CriLJ 2278 : (2011) 3 RCR(Criminal) 160 : (2011) 1 UPLBEC 1 and reiterated in a recent Full Bench judgment of this Court in the case of [Jagannath Verma Vs. State of U.P.](#), (2014) 8 ADJ 439 : AIR 2014 All 214 : (2014) 6 ALJ 405 : (2014) 6 CTC 353 : (2014) 4 UPLBEC 2665 , the revision against the order of Magistrate directing to register the F.I.R. is not maintainable. Hence, the revision

ought not to have been admitted, but learned Sessions Judge has illegally and arbitrarily admitted the revision by the order impugned which is liable to be quashed, hence he has prayed that the impugned order be quashed and further proceeding in the aforesaid criminal revision be also quashed.

2. Heard learned counsel for the applicant; learned A.G.A. for the State and perused the record.

3. Some background facts, in brief, are that an application under Section 156(3), Cr.P.C. was filed by the applicant Rajesh Yadav against the opposite party Nos. 2 to 4 (in the present application) wherein it was stated that the applicant had purchased the landed property bearing area 6 1/2 Bigha situated at village Gortutawa, Tappa-84, Pargana Kantit, Tehsil Madihan, District Mirzapur vide sale deed dated 20.01.2005 which was executed by Avadhesh Kumar son of Mishri Lal/brother of Chanda Devi who was power of attorney holder of Chanda Devi (Opposite party No. 3). Chanda Devi had executed the registered power of attorney in favour of her brother Avadhesh Kumar on 15.6.1990 and on the basis of which Avadhesh Kumar was the authorised person to sell or manage the property. Rajesh Yadav had purchased some land from Awadhesh Kumar on 20.1.2005. He got the sale deed registered and since then he was in possession over such land. But Chanda Devi executed a sale deed in respect of the same plot in favour of another person without cancelling the power of attorney already existing in favour of Awadhesh Kumar. Hence he prayed that a criminal case be registered against Chanda Devi and two others. The aforesaid application was registered as Misc. Case No. 568 of 2014 (Rajesh Yadav v. Jagdish Singh and others). The Ist Additional Chief Judicial Magistrate, Mirzapur by his order dated 20.1.2015 directed the Station House Officer, Police Station Kotwali Dehat, District Mirzapur to lodge the first information report against the opposite party Nos. 2 to 4.

4. In compliance of the aforesaid order of Magistrate, a first information report was lodged on 21.1.2015 bearing Case Crime No. 124 of 2015, under Sections 419, 420, 467, 468 and 471, I.P.C., Police Station Kotwali Dehat, District Mirzapur against the opposite party Nos. 2 to 4. Thereafter the opposite parties/accused persons preferred a criminal revision before the learned Sessions Judge, Mirzapur against the order dated 20.1.2015 passed by Ist Additional Chief Judicial Magistrate, Mirzapur alleging that they have not committed any offence because Chanda Devi being the recorded owner and Bhumidhar with transferable rights had done no offence by selling her land.

5. Learned Sessions Judge while hearing on admission of the aforesaid revision, passed the impugned order whereby he admitted the aforesaid revision, the legality, correctness and propriety whereof has been challenged here.

6. In the case of [Father Thomas Vs. State of U.P. and Another](#), (2011) 2 ACR 1457 : (2011) 1 ADJ 333 : (2011) CriLJ 2278 : (2011) 3 RCR(Criminal) 160 : (2011) 1 UPLBEC 1 ,

it has been held that "at the pre cognizance stage, when only a direction has been issued by the Magistrate under Section 156(3), Cr.P.C. to investigate, the prospective accused has no locus standi to challenge such direction for investigation of a cognizable case before cognizance or the issuance of process. An order under Section 156(3), Cr.P.C. passed by a Magistrate directing a police officer to investigate a cognizable case is not an order which impinges on the valuable rights of the party. An order by the Magistrate for investigation is an ancillary step in aid of investigation and trial, and is interlocutory in nature, similar to orders granting bail, calling for records, issuing search warrants, summoning witnesses and other like matters which do not infringe upon valuable rights of a prospective accused and hence not amenable to challenge in a criminal revision in view of the bar contained in Section 397(2) of the Code."

7. In the recent judgment of [Jagannath Verma Vs. State of U.P.](#), (2014) 8 ADJ 439 : AIR 2014 All 214 : (2014) 6 ALJ 405 : (2014) 6 CTC 353 : (2014) 4 UPLBEC 2665 , another Full Bench of this Court while reiterating the law laid down in Father Thomas case (supra) has held that a direction to the police to register a first information report in regard to a case involving a cognizable offence and for investigation is interlocutory in nature and, therefore, attracts the bar under sub-section (2) of Section 397 of the Code. However, if the application under Section 156(3), Cr.P.C. is rejected, the rejection order cannot be termed as interlocutory order and such an order is amenable to the remedy of criminal revision under Section 397, Cr.P.C. and in such case, the prospective accused or the person suspected of having committed a crime is entitled to an opportunity of being heard.

8. As in the present case, the impugned order is an order directing the police to investigate the case, the prospective accused, i.e. Chanda Devi and others had no right to challenge this order by way of revision. Hence the revision ought not to have been admitted by the learned Sessions Judge but he has wrongly admitted it. Under these circumstances, the application under Section 482, Cr.P.C. is allowed and the impugned order dated 04.02.2015 passed by Sessions Judge, Mirzapur in Criminal Revision No. 20 of 2015 (Jagdish Singh and others v. State of U.P. and another) is quashed. The opposite party Nos. 2 to 4 are at liberty to avail the alternative remedy as available to them under law.