

Court No. - 81

Case :- MATTERS UNDER ARTICLE 227 No. - 6854 of 2023

Petitioner :- Babli Katiyar

Respondent :- State of U.P. and Another

Counsel for Petitioner :- Mahendra Pratap Singh

Counsel for Respondent :- G.A.,Mushir Khan

Hon'ble Mrs. Jyotsna Sharma,J.

1. Heard Sri Mahendra Pratap Singh, learned counsel for the petitioner, Sri Mushir Khan, learned counsel for the respondent and learned A.G.A. for the State.

2. This petition under article 227 has been filed for following reliefs:

A. To issue a writ or direction and please to set aside the impugned order dated 01.04.2023 passed by Sessions Judge Kanpur Nagar in criminal revision no. 239 of 2022 as well as order dated 20.08.2022 passed by the learned Civil Judge (Junior Division)/F.T.C. Kanpur Nagar in misc. application no. 1116 of 2019, Babli Katiyar versus Neeraj Katiyar and direct the police of police station Kalyanpur, District- Kanpur Nagar to lodge the first information report against the accused person as per the facts mentioned in the application under section 156(3) Cr.P.C.

3. The relevant facts of the case are as below:

(i) As per version of the petitioner, Babli Katiyar (the petitioner herein) filed a complaint under section 156 (3) Cr.P.C. under sections 376 and 506 I.P.C. with the allegations that the opposite party, who happens to be her *Jeth* finding her alone in her house, committed rape on her at about 1.00 P.M. on 03.02.2019; he also threatened her not to disclose this fact to her husband, otherwise, he will kill her 18 months old son; she disclosed the incident to her husband when he came back and also informed the police station Kalyanpur, Kanpur Nagar; she was not heard there, therefore, she sent a complaint to S.S.P. Kanpur Nagar.

(ii) This application under section 156 (3) Cr.P.C. was moved on 06.02.2019, before the court of Chief Metropolitan Magistrate She was heard, the application was treated as complaint. The procedure of 200 and 202 Cr.P.C. was adopted and the evidence recorded. The matter was also directed to be investigated under the provisions of section 202 (1) of Cr.P.C. The learned trial court heard the complainant and passed an order dismissing the complaint under section 203 Cr.P.C. The complainant preferred a criminal revision. Both the sides were heard by the revisional court, the revisional court passed an order dismissing the revision and affirming the order of the trial court on 01.04.2023. Now the petitioner is before this Court challenging both the aforesaid orders praying for reliefs as mentioned earlier.

4. It is submitted by the petitioner that from the statements made in the application moved under section 156 (3) of Cr.P.C., the commission of cognizable offence is disclosed, therefore, the Magistrate was bound to order for the registration of F.I.R. The Magistrate committed error of law by directing it to be treated as complaint. On the other hand learned A.G.A. submits that petitioner has not challenged the order whereby her application under section 156 (3) Cr.P.C. was treated as complaint. Hence, in my view, the petitioner cannot raise this issue now.

5. Next it is submitted that the complainant examined herself under section 200 Cr.P.C. and also

produced witness-Mukesh Kumar. It is argued that from the oral evidence, *prima facie* the offence under sections 376 and 506 I.P.C. is amply made out. Learned trial court as well as revisional court passed an arbitrary order. They ignored the oral evidence on record. The trial court as well as the revisional court went on to assess the evidentiary value of the statements. At the time of summoning, the court is not expected to go deep into the evidence and check the veracity of the statements. Therefore, both the impugned orders are not sustainable in the eye of law. The revisional court went beyond jurisdiction and made such observations, which were not called for.

6. The respondent has submitted that the application was given with a completely false and concocted story with ulterior motives. The real facts are that there are domestic and property disputes between the two parties. This may be noted at this stage, that the petitioner's counsel fairly admits that there has been a quarrel between the two sides as regard devolution of property. He submits that the petitioner was cheated and the property was given to the respondent-Neeraj Katiyar and that the petitioner and his husband (who is real brother of Neeraj), has been divested of property to which he was entitled. The petitioner admits that he has already filed a civil suit for cancellation of sale deed executed in favour of respondent- Neeraj Katiyar. Thus, this admitted position comes into light that not only there are domestic dispute but disputes over property as well, between the two sides.

7. This is further contended by the respondent that this incident allegedly took place on Sunday afternoon at about 1.00 PM, when ordinarily, family members are present. It is said that the place of occurrence is the same house where both sides reside jointly. The mother of the respondent no.2 (who happens to be mother-in-law of the petitioner), moved an application under section 21 of Maintenance and Welfare of Parents and Senior Citizens Act, 2007, which is a complaint case i.e. 286 of 2018 (Girija Devi vs. Mukesh Kumar Katiyar and Babli Katiyar).

8. It is vehemently argued that this complaint under section 21 of Maintenance and Welfare of Parents and Senior Citizens Act was filed on 27.11.2018 i.e. about two months before the alleged occurrence. It is contended that this false case has been lodged against real son of Girija Devi, just to exert pressure and to have her way. It is further contended that the complainant did not undergo any medical checkup. Except plain and bald statement given by the complainant and her husband under section 200 and 202 Cr.P.C., there was no evidence to support the complainant's story. The complainant could not produce any other member of her family or any other person outside his family as witness, to lend credence to her story. The accused is working as a Lecturer and is on a respectable post and that this complaint is nothing but misuse of process of law.

9. The relative scope of Sections 203 and 204 Cr.P.C. were noted and considered by the Supreme Court in **Pepsi Food Limited and another vs. Special Judicial Magistrate and others; (1998) 5 SCC 749**, is as below:-

"Summoning of an accused in a criminal case is a serious matter. Criminal law cannot be set into motion as a matter of course. It is not that the complainant has to bring only two witnesses to support his allegations in the complaint to have the criminal law set into motion. The order of the magistrate summoning the accused must reflect that he has applied his mind to the facts of the case and the law applicable thereto. He has to examine the nature of allegations made in the complaint and the evidence both oral and documentary in support thereof and would that be sufficient for the complainant to succeed in bringing charge home to the accused. It is not that the Magistrate is a silent spectator at the time of recording of preliminary evidence before summoning of the accused. Magistrate has to carefully scrutinise the evidence brought on record and may even himself put questions to the complainant and his witnesses to elicit answers to find out the truthfulness of the allegations or otherwise and then examine if any offence is prima facie committed by all or any of the accused."

10. The Magistrate is not expected to place blind faith on statements or evidence coming before him at the time of passing summoning order. Of course, he may look for substance in the allegations and in case, it is found that story is concocted and lacks credibility, he is perfectly within his powers to reject the story and dismiss the complaint under section 203 I.P.C. This is exactly the thing, which has been done in this case. I do not find any good ground to interfere in the impugned orders.

11. Hence, the petition is **dismissed**.

Order Date :- 13.10.2023

Sumit Kumar