

Reserved

Neutral Citation No. - 2023:AHC:221136

Court No. - 78

Case :- CRIMINAL REVISION No. - 3134 of 2023

Revisionist :- Gautam Gihar

Opposite Party :- State Of U.P. And 2 Others

Counsel for Revisionist :- Utkarsha Shukla

Counsel for Opposite Party :- G.A., Aman Kumar

Hon'ble Raj Beer Singh,J.

1. Heard learned counsel for the revisionist, learned counsel for informant and learned A.G.A. for the State.
2. This criminal revision has been preferred against the order dated 09.05.2023, passed by the learned Special Judge (Prevention of Corruption Act)/Additional District & Sessions Judge, Court No.1, Bareilly in Criminal Misc. Case No.08 of 2023 (Gautam Gihar vs. Ramesh Chandra & Others), whereby, the application filed by the revisionist under Section 156(3) Cr.P.C. has been rejected and a direction was made for initiating proceedings against the revisionist under Section 182 I.P.C.
3. Learned counsel for the revisionist has argued that the impugned order is against facts and law and thus, liable to be set aside. The revisionist has filed an application under Section 156 (3) Cr.P.C., wherein, clear allegations were levelled against the respondent No.2 and 3, who were working as Secretary and Assistant of Gram Panchayat Peepalsana, that when the revisionist has applied for issuance of death certificate of his mother, they took Rs.500/- from him but the certificate was not issued and thereafter, they have demanded an amount of Rs.1,000/- from revisionist for issuing the said certificate. It was also alleged that the respondent No.2 and 3 have abused the revisionist. The application filed by the revisionist discloses commission of cognizable offence as well as commission of offence under the Scheduled Castes and Scheduled Tribes (POA)

Act, but the same was rejected by the learned Special Judge/Trial Court by recording erroneous findings. Further, the direction for initiating proceedings under Section 182 I.P.C. against revisionist is wholly illegal. In this connection, learned counsel for the revisionist has referred the case of *Saloni Arora vs. State (NCT of Delhi)* (2017) 3 SCC 286 and *Dr. Apurva Ghiya vs. State of Chhattisgarh, through Collector, District Rajnandgaon (C.G.) and 4 Others (W.P. (Cr.) No.310 of 2020)*, decided on 07.10.2020 (Chhattisgarh H.C.)

4. Per contra, learned A.G.A. and learned counsel for informant have opposed the prayer and argued that there is no illegality or perversity in the impugned order.

5. I have considered rival submissions and perused the record.

6. The legal position regarding exercise of powers under section 156(3) CrPC is well settled. In view of law laid down by the Division Bench of this Court in the case of *Sukhwasi Lal vs. State of U.P.* 2007(59) ACC 739, it is not incumbent upon a Magistrate to allow an application under Section 156(3) Cr.P.C. and there is no such legal mandate. He may or may not allow the application in his discretion. It is also clear from the said case law that Magistrate has a discretion to treat an application under Section 156(3) Cr.P.C. as a complaint case. The Magistrate / Court is not bound to pass order of investigation by police, even if such application discloses cognizable offence. The Magistrate / Court is required to apply its mind to find out whether the first information sought to be lodged by applicant had any substance or not. Even in the cases, where prima facie cognizable offence is disclosed from the averments made in the application under section 156 (3) Cr.P.C. in appropriate case according to facts and nature of the offences alleged to have been committed, the Magistrate can decline to direct investigation and in such cases the application under section 156(3) Cr.P.C. can be treated as complaint, as held by the Division Bench in the case

of Sukhwasi vs. State of U.P. (supra). Thus, though, in appropriate cases, learned Magistrate can make a direction for police to investigate the matter but this jurisdiction has to be exercised cautiously and such order cannot be passed in a routine manner.

7. In case **Mrs. Priyanka Srivastava and another vs. State of U.P. and others; 2015 AIR(SC)1758**, the Hon'ble Apex Court held as under:

"At this stage it is seemly to state that power under Section 156(3) warrants application of judicial mind. A court of law is involved. It is not the police taking steps at the stage of Section 154 of the code. A litigant at his own whim cannot invoke the authority of the Magistrate. A principled and really grieved citizen with clean hands must have free access to invoke the said power. It protects the citizens but when pervert litigations takes this route to harass their fellows citizens, efforts are to be made to scuttle and curb the same."

8. Thus, dealing with application under Section 156(3) Cr.P.C., Magistrate is required to apply its mind to find out whether the first information sought to be lodged by the applicant had any substance or not. If the allegations made in the application under section 156(3) Cr.P.C. prima-facie appear to be without any substance, then in such case the Magistrate can refuse to direct registration of the FIR and its investigation by the police, even if the application contains the allegations of commission of a cognizable offence. In such case, the Magistrate is fully competent to reject the application. Even in the cases, where prima facie cognizable offence is disclosed from the averments made in the application under section 156 (3) Cr.P.C. in appropriate case according to facts and nature of the offences alleged to have been committed, the Magistrate can decline to direct investigation and in such cases the application under section 156(3) Cr.P.C. can be treated as complaint, as held by the Division Bench in the case of Sukhwasi vs. State of U.P. (supra).

9. Coming to the facts of the case in hand, it appears that the revisionist has moved an application under section 156 (3) CrPC

alleging that while he has approached the private respondents for issuing death certificate of his mother, they demanded an amount of Rs. 500/- from the revisionist and the revisionist has paid that amount but the certificate was not issued. The respondent No.1 and 2 have again demanded an amount of Rs.1000/- from informant for issuance of said certificate. The trial court found that death certificate of the mother of revisionist was issued on 10/01/2002, whereas the application under section 156(3) CrPC was presented on 20/03/2023. Further, the said allegation regarding demand of money is not supported by any independent witness. No specific date or place of alleged demand of money has been stated. As observed earlier, the Magistrate / Court is not bound to pass an order of investigation by police, even if such application discloses cognizable offence. The Magistrate / Court is required to apply its mind to find out whether the first information sought to be lodged by applicant had any substance or not. In view of attending facts and circumstances, no case for investigation by police is made out and thus, it can not be said that the refusal of prayer of investigation, by the Court below suffers from any material illegality or perversity.

10. However, so far the direction of the court below to initiate proceedings under section 182 IPC against the revisionist, is concerned, it appears that the same is not accordance with law. Merely because the Court did not found the version of revisionist cogent enough, it does not mean that the Court can pronounce such verdict that the revisionist has given any false information to the Court so as to require action under section 182 IPC. The lack of credibility in the version of the revisionist does not necessarily mean false information. Further, to prosecute an accused for an offence punishable under [Section 182](#) IPC, it is mandatory to follow

the procedure prescribed under [Section 195](#) of the CrPC, which has not been adhered to in the instant matter.

11. In the case of *Saloni Arora (supra)*, the Apex Court held as under:

*“10) As rightly pointed out by the learned counsel for the parties on the strength of law laid down by this Court in the case of *Daulat Ram vs. State of Punjab*, (AIR 1962 SC 1206) that in order to prosecute an accused for an offence punishable under Section 182 IPC, it is mandatory to follow the procedure prescribed under Section 195 of the Code else such action is rendered void ab initio.*

*11) It is apposite to reproduce the law laid down by this Court in the case of *Daulat Ram (supra)* which reads as under:*

“There is an absolute bar against the Court taking seisin of the case under S.182 I.P.C. except in the manner provided by S.195 CrI.P.C.

Section 182 does not require that action must always be taken if the person who moves the public servant knows or believes that action would be taken. The offence under S.182 is complete when a person moves the public servant for action. Where a person reports to a Tehsildar to take action on averment of certain facts, believing that the Tehsildar would take some action upon it, and the facts alleged in the report are found to be false, it is incumbent, if the prosecution is to be launched, that the complaint in writing should be made by the Tehsildar; as the public servant concerned under S.182, and not leave it to the police to put a charge-sheet. The complaint must be in writing by the public servant concerned. The trial under S.182 without the Tehsildar's complaint in writing is, therefore, without jurisdiction ab initio.” (Emphasis supplied)

*12) It is not in dispute that in this case, the prosecution while initiating the action against the appellant did not take recourse to the procedure prescribed under Section 195 of the Code. It is for this reason, in our considered opinion, the action taken by the prosecution against the appellant insofar as it relates to the offence under Section 182 IPC is concerned, is rendered void ab initio being against the law laid down in the case of *Daulat Ram (supra)* quoted above.”*

12. Thus, it is apparent that for prosecution of an account under section 182 I.P.C. in such matters, it is mandatory to follow the procedure prescribed under Section 195 CrPC. In the instant matter it appears that while initiating action against the revisionist for prosecution under Section 182 IPC, the Court did not take recourse to the procedure prescribed under [Section 195](#) of the Cr.P.C. Thus, so far the direction for prosecution of the revisionist for the offence under [Section 182](#) IPC, is concerned, the same is void ab initio being against the law laid down in the aforesaid case.

13. In view of aforesaid, rejection of application under section 156(3) CrPC by Court below is upheld but the direction for initiating proceedings against revisionist under section 182 IPC is set aside. The impugned order is altered to this extent.

14. The revision is disposed of in above terms.

Order Date :- 22.11.2023

Neeraj