

Court No. - 77

Case :- MATTERS UNDER ARTICLE 227 No. - 10176 of 2023

Petitioner :- Dilawar Singh Saini

Respondent :- State Of U.P. And 2 Others

Counsel for Petitioner :- Mahabir Yadav,Victor Henry

Counsel for Respondent :- G.A.

Hon'ble Mrs. Renu Agarwal,J.

1. The present petition under Article 227 of the Constitution of India has been moved for setting aside the order dated 06.06.2022 passed by the Chief Judicial Magistrate, Mahoba in Misc. Case No. 252 of 2022 (Dilwar Singh Saini Vs. Estar Sona Fedrasen and another) filed under Section 156(3) Cr.P.C by which the learned Magistrate by his order dated treated the application filed by the petitioner as complaint and order dated 27.07.2023 passed by learned Sessions Judge Mahoba in Criminal Revision No. 05 of 2023 (Dilawar Singh Saini Vs. State of U.P. and others) by which the order of the Magistrate was confirmed and the revision was dismissed.

2. It is submitted by the learned counsel for the petitioner that the petitioner moved an application under Section 156 (3) Cr.P.C to direct the police concerned to register police case on the ground that the wife of the petitioner, namely, Smt Asha Frandsen was operating Account No. 11059281182 with the State bank of India jointly with respondent No. 2 and 3 The wife of the petitioner deposited Rs.15,09,514/- (Fifteen Lakhs

Nine thousand five hundred fourteen) in the aforesaid account. The respondent No. 2 and 3 did not deposit anything in that account. The wife of the petitioner died on 13.10.2021. After the death of the wife of the petitioner, the respondent No. 2 and 3 who are step sisters of the wife of the petitioner fraudulently withdrew all the money deposited by the wife of the petitioner in the aforesaid account. The respondents No. 2 and 3 made the aforesaid withdrawal on 18.11.2023 and transferred the same in their account. The petitioner made an enquiry with the said bank and it was informed that it was a joint account in the name of wife of the petitioner as well as respondent Nos. 2 and 3 and it was operated by respondent Nos. 2 and 3. When the petitioner asked the respondents No. 2 and 3 to return the aforesaid amount they refused to do so and threatened the petitioner of his life.

3. It is also submitted by the learned counsel for the petitioner that all the records are available with the bank, therefore, registration of case is needed and the learned trial court wrongly treated the application moved under Section 156 (3) Cr.P.C as a complaint. It is further submitted that the learned revisional court also arbitrarily dismissed the revision preferred against the order of learned trial court.

4. I have heard learned counsel for the parties and perused the

record.

5. From the perusal of record, it transpires that an account was opened by the wife of the petitioner along with her two sisters i.e. respondents No. 2 and 3. There is no proof available on record to show that the amount in dispute was deposited by the petitioner. It is also a settled position that a joint account can be operated by any of the account holder and the opposite parties have operated the account and withdrawn the money.

6. The order of learned trial court goes to show that all the facts are in absolute knowledge of the petitioner and there is nothing on record to be investigated. Learned trial court while passing the impugned order has relied upon the law laid down by Hon'ble Apex Court in the case of ***Sukhwasi Vs. State of U.P. (2008) Cr.L.J 472*** and treated the application as complaint. When the order was challenged in revision learned revisional court has relied upon the follow case laws:

(1) Rambabu Gupta Vs. State of U.P. Reported at 2001 (43) SCC 50

(2) Mohd. Yusuf Vs. Smt. Aafaq Jaha 2006 (54) SCC 530

(3) Shiv Narayan Jaiswal Vs.State of U.P. 2007 (57) SCC 7 (Alld).

(4) Nathulal Gangwar Vs. State of U.P. 2008 (61) SCC 792

Allahabad

(5) Sukhwasi Vs. State of U.P. 2007 (59) SCC 739 (Allahabad).

(6) Suresh Chand Jain Vs. State of M.P. (2001) 2 SCC page 682
SC

(7) Chandrapal Vs. State of U.P. 2009 (4) ALJ page no. 35
Allahabad.

7. It is clear from the judgment of the Supreme Court in the case ***Suresh Chandra Jain v. State of Madhya Pradesh and Anr. 2001 (42) A.C.C. 459***, that a Magistrate has the authority to treat an application under Section 156(3) Cr.P.C. as a complaint. This will become clear from the reference in the said report to the case of ***Gopal Das Sindhi and Ors. v. State of Assam and Anr. A.I.R. 1961 S.C. 986***, in which the following observations were made:

“If the Magistrate had not taken cognizance of the offence on the complaint filed before him, he was not obliged to examine the complainant on oath and the witnesses present at the time of filing of the complaint. We cannot read the provisions of Section 190 to mean that once a complaint is filed, a Magistrate is bound to take cognizance if the facts stated in the complaint disclose the commission of any offence. We are unable to construe the word 'may' in Section 190 to mean 'must'. The reason is obvious. A complaint disclosing cognizable offences may well justify a Magistrate in sending the complaint, under Section 156(3) to the police for investigation. There is no reason why the time of the Magistrate should be wasted when primarily the duty to investigate in cases involving cognizable offences is with the police. On the other hand, there may be occasions when the Magistrate may exercise his discretion and 'Take'

cognizance of a cognizable offence.”

8. In the case of *Chandrika Singh v. State of U.P. and Ors.* 2007 (58) ACC 777 has held that a Magistrate can treat an application under Section 156(3) Cr.P.C. as a complaint. The Hon'ble Judge referred to various cases in his judgment and has come to this conclusion thereafter. It was observed as follows:

"In view of this judgment of Full Bench, the Magistrate is fully competent to pass an order to register a case and investigate on an application under Section 156(3) Cr.P.C., all the application under Section 156(3) Cr.P.C. may be treated as complaint and in the circumstance, the Magistrate shall follow the procedure as provided in Chapter XV Cr.P.C. This judgment of Full Bench has not been set aside. Hence, in view of the Apex Court and Full Bench of this Court the Magistrate is fully competent to treat an application under Section 156 Cr.P.C as a complaint and in the present case the Magistrate passed an order in the circumstances of the case that it may be registered as a complaint case and proceed to record the statement under Sections 200 and 202 Cr.P.C. There appears no illegality and impropriety in the order of the Magistrate."

9. This Court in the case of ***Sukhwasi Vs. State of U.P. 2007 (59) SCC 739 (Allahabad)*** has held as follows:

"..... in view of the aforesaid discussion on the legal provisions and decisions of the Supreme Court as on date, it is hereby held that on receiving a complaint, the Magistrate has to apply his mind to the allegations in the complaint upon which he may not at once proceed to take cognizance and may order it to go to the police station for being registered and investigated. The Magistrate's order must indicate application of mind. If the Magistrate takes cognizance, he proceeds to follow the procedure provided in Chapter-XV of Cr.P.C.....

7. It will also be noticed that the law was, and has always been, that if a cognizable offence is made out, the Police are bound to register the First Information Report. In case, the Police do not register the First

Information Report, there is provision under Section 154(3) Cr.P.C. to send an application to Superintendent of Police, who shall direct the registration of a First Information Report, if a cognizable offence is disclosed. There was as such, no need for an authority in this regard being given to the Magistrate. That, this has been done and such authority as given to the Magistrate indicates, that this has been done, because the Magistrate will bring to bear upon the matter a judicial and judicious approach, which will by necessarily implication be selective. That gives a clear incling to the intention of the legislature, that the Magistrate may consider the feasibility and propriety, of passing an order of registration of the First Information Report.

8. The matter may be looked into from another angle, and that is, in Section 154(3) Cr.P.C. where the Superintendent of Police has been given the authority for registration of First Information Report, the word used is 'Shall'. Section 154(3) Cr.P.C. is as hereunder;

154. Information in cognizable cases - (1)

(2)

(3) Any person aggrieved by a refusal on the part of an officer in charge of a police station to record the information referred to in Sub-section (1) may send the substance of such information, in writing, and by post, to the Superintend of Police concerned who, if satisfied that such information discloses the commission of a cognizable offence shall either Investigate the case himself or direct an investigation to be made, by any police officer subordinate to him, in the manner provided by this Code, and such officer shall have all the powers of an officer incharge of the police station in relation to that offence.

In Section 156(3) Cr.P.C., the word used is 'May' Section 156(3) Cr.P.C. is as follows;

156. Police officer's power to investigate cognizable case - (1)

(2)

(3) Any Magistrate empowered under Section 190 may order such an investigation as above-mentioned."

10. Thus in view of the above discussions, this Court is of the view that it is well within the jurisdiction of the Court to convert an application moved

under Section 156 (3) in the complaint and there is no illegality or irregularity in the impugned order so as to require indulgence by this Court.

11. In view of the above, the petition is liable to be dismissed and is accordingly dismissed.

(Renu Agarwal,J.)

Order Date :- 20.11.2023

Nadeem