

Court No. - 93

Case :- APPLICATION U/S 482 No. - 35593 of 2023

Applicant :- Abida Khatoon

Opposite Party :- State Of U.P. And 4 Others

Counsel for Applicant :- Shashi Dhar Shukla

Counsel for Opposite Party :- G.A.

Hon'ble Manoj Bajaj,J.

Applicant- Abida Khatoon is aggrieved against the order dated 01.07.2023 passed by Special Judge (SC/ST Act), Sant Kabir Nagar in Criminal Revision No.82 of 2022, titled Abida Khatoon and others vs. State of U.P. and others), Police Station- Belhar Kalan, District- Sant Kabir Nagar, whereby the order dated 16.08.2022 passed by Civil Judge (Junior Division) F.T.C.-II/Judicial Magistrate, Sant Kabir Nagar in Miscellaneous Application No.740 of 2022 under Section 156(3) Cr.P.C., refusing to issue directions to the police to register the F.I.R. and for investigation, has been upheld.

Learned counsel submits that the applicant being a married lady was physically victimized by her in-laws, and she filed an application under Section 156(3) Cr.P.C. before the magistrate on 11.05.2022 regarding commission of the offences punishable under Section 376 IPC etc. He further submits that the court has erroneously failed to exercise the powers vested in it, therefore, it has resulted in miscarriage of the justice to the applicant as her application was rejected vide order dated 16.08.2022 (Annexure No.2). According to learned counsel, aggrieved by the order dated 16.08.2022, applicant filed revision before the Special Judge (SC/ST Act), Sant Kabir Nagar, but the same was also dismissed

vide order dated 01.07.2022 (Annexure No.4). He prays that as the complaint reveals commission of offence, therefore, the necessary directions be issued.

After hearing the learned counsel and considering his submissions as well as material on record, this Court finds that the complaint filed by the complainant contains averments relating to the matrimonial dispute with her in-laws and pendency of the litigation. As per allegations on 25.10.2021 at around 4 P.M. when she was returning home after attending the court hearing then the accused persons accused named in the complaint followed her and took her forcibly from the tempo, in a Bolero vehicle and was taken to a secluded place and committed rape with her. Later she was dropped near village- Nandore and she reached her parental house. The allegations in the complaint are lacking in material particulars, therefore, finding no *prima facie* case, the magistrate vide order dated 01.07.2023 rightly refused to exercise the jurisdiction and proceeded to dismissed the complaint, but the court has not afforded any opportunity to the complainant to make out a case by adducing pre- summoning under Chapter XV Code of Criminal Procedure.

By now, it is a settled law that the jurisdiction u/s 156(3) Cr.P.C. is to be exercised in such a complaint where despite disclosure of commission of a cognizable offence, police fails to do its duty, and such a direction by the magistrate comes as reminder to the police to do the needful as contemplated under Chapter XII Code of Criminal Procedure. Alternatively, the complainant can be given an opportunity to lead evidence to make out a *prima facie* case in respect of the commission of alleged offences.

Thus, in view of above discussion, this Court does not find any

reason to interfere with the impugned order as far as it rejects the claim of the complainant for exercise of power under Section 156(3) Cr.P.C. However, it is directed that the complaint filed by the complainant be proceeded with the procedure enshrined in Chapter XV Code of Criminal Procedure.

With these observations, this application is disposed of.

Order Date :- 23.11.2023

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