

Court No. - 93

Case :- APPLICATION U/S 482 No. - 36222 of 2023

Applicant :- Rukmani Devi

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

Counsel for Applicant :- Ram Bahadur Singh

Counsel for Opposite Party :- G.A.

Hon'ble Manoj Bajaj,J.

Applicant- Rukmani Devi is aggrieved against the order dated 14th July, 2023 passed by Special Judge (POCSO Act), Kaushambi, whereby her complaint bearing number 59 of 2003, Rukmani Devi Vs. Karan and others, praying for exercise of jurisdiction under Section 156(3) Cr.P.C. for issuance of directions to the police to register the F.I.R. and for investigation, has been dismissed.

Learned counsel submits that the applicant being a poor lady was physically victimized by the accused and initially, the said offence was committed on 8th August, 2019. Thereafter, on the promise of the accused that he would marry the complainant, she continued her relations with the accused, but he failed to keep his word and it amounts to commission of the offence punishable under Section 376 IPC etc. He submits that the court has erroneously failed to exercise of the powers vested in it, therefore, it has resulted in miscarriage of the justice to the applicant. He prays that the impugned order be set aside and the necessary directions be issued to the police for registration of the case and investigation.

During the course of hearing it is not disputed by learned counsel that previously also, the applicant had filed a similar complaint bearing number 7195 of 2021 before Chief Judicial Magistrate, Kaushambi, but according to him the same was dismissed vide

order dated 13th December, 2022 as complainant failed to adduce any pre summoning evidence and she herself remained absent.

After hearing the learned counsel and considering his submissions as well as material on record, this Court finds that averments contained in the complaint/application moved under Section 156(3) Cr.P.C. lack relevant particulars, therefore, do not *prima facie* disclose the commission of the alleged offences. Even there is no averment or prayer made in this application relating to alleged commission of offences.

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. Though the complainant had filed a similar complaint previously, but the same was not adjudicated upon merits and was dismissed for non-prosecution, whereas in this complaint also, the court while refusing to exercise the power u/s 156(3) Cr.P.C. has not allowed the opportunity to the complainant to adduce pre summoning evidence. So, the filing a similar complaint previously cannot be treated as a bar to fresh complaint.

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 the Code of Criminal Procedure.

With these observations, this application is disposed of.

Order Date :- 22.11.2023

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