

Court No. - 86

Case :- APPLICATION U/S 482 No. - 37709 of 2023

Applicant :- Durgesh Nandani

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

Counsel for Applicant :- Chandan Singh

Counsel for Opposite Party :- G.A.,Amit Kumar
Mishra,Nagendra Kumar Mishra

Hon'ble Rajiv Gupta,J.

1. Heard Shri Chandan Singh, learned counsel for the applicant, learned AGA for the State and Shri Nagendra Kumar Mishra, learned counsel for opposite party nos.2 and 3.

2. By means of this application, the applicant has challenged the order dated 23.02.2021 passed by learned Chief Judicial Magistrate, Varanasi in Misc. Case No.107 of 2020 (Durgesh Nandani Vs. Surendra and others), under section 156 (3) Cr.P.C, Police Station Cantt, District Varanasi by which the said application has been directed to be treated as complaint and the case has been fixed for recording the statement of the witness under section 200 Cr.P.C and the order dated 29.03.2023 passed by the Revisional Court in Criminal Revision No.339 of 2022 affirming the said order.

3. Brief facts of the case are that an application was filed by the applicant on 20.02.2020, under section 156(3) Cr.P.C. before the Chief Judicial Magistrate, Varanasi and the learned Magistrate after considering the entire allegations and material on record directed the application to be registered as a complaint and for recording the statement of the complainant under Section 200 Cr.P.C. vide his order dated 23.02.2021.

4. Being aggrieved and dissatisfied by the said order dated 23.02.2021, a criminal revision being Criminal Revision No.339 of 2022 was filed by the applicant before the court of Additional District and Sessions Judge, Court No.7, Varanasi and after hearing the parties, the said revision has also been dismissed by a well considered order dated 29.03.2023.

5. Being aggrieved and dissatisfied by the said orders dated 23.02.2021 and 29.03.2023, the applicant has filed present application u/s 482 Cr.P.C.

6. Learned counsel for the applicant has submitted that from the allegations made in the application under section 156(3) Cr.P.C. cognizable offence is clearly disclosed, as such, it was incumbent upon the learned magistrate to direct the police to register a case under section 154 Cr.P.C. and investigate the same.

7. Per contra, learned A.G.A. as well as learned counsel for opposite party nos.2 and 3 have submitted that upon receiving the application under section 156(3) Cr.P.C., the magistrate may in its discretion either direct the police to register the case under section 154 Cr.P.C. or may treat the application as complaint and examine upon oath the complainant and the witnesses and proceed therewith. Further while making enquiry, he may in exercise of power u/s 202 (1) Cr.P.C. direct an investigation to be made by a police officer or by such other person as he thinks fit, for the purpose of deciding whether or not there is sufficient ground for proceedings as held by Hon'ble Apex Court in the cases of ***Mohd Yusuf Vs. Afaq Jahan (Smt) and another reported in (2006) 1 SCC 627, Fakhruddin Ahmad Vs. State of Uttaranchal and another, reported in (2008) 17 SCC 157 and Ram Babu Gupta Vs. State of U.P. and others reported in 2001 (43) ACC 50 (FB)***. Further, the revisional court after taking into consideration the entire material on record and after hearing the parties passed a well reasoned order dismissing the revision vide order dated 29.03.2023.

8. From the aforesaid decisions, it is ample clear that upon an application received under section 156(3) Cr.P.C., which discloses cognizable offence, the Magistrate may in its discretion direct the police to register an F.I.R. or may direct it to be treated as a complaint and proceed therewith by recording the statements under section 200 and 202 Cr.P.C. Moreover, the complainant in the instant case is having full knowledge of facts and material evidence and is in a position to lead the evidence and therefore, orders passed by Chief Judicial Magistrate, Varanasi do not suffer from any illegality, impropriety or jurisdictional error so as to warrant any interference. Moreover, the revisional court after taking into consideration the entire material on record and after hearing

the parties passed a well reasoned order dismissing the revision vide order dated 29.03.2023.

9. In view of the aforesaid facts, this court is not inclined to exercise its inherent jurisdiction under Section 482 CrPC. to quash the impugned orders which are just, proper and legal.

10. With these observations, this application under Section 482 CrPC is disposed of.

Order Date :- 17.11.2023

SFH