

Court No. - 86

Case :- APPLICATION U/S 482 No. - 40278 of 2023

Applicant :- Pratibha Jain

Opposite Party :- State Of U.P. And 6 Others

Counsel for Applicant :- Raghuraj Singh

Counsel for Opposite Party :- G.A.

Hon'ble Rajiv Gupta,J.

1. Heard learned counsel for the applicant, learned AGA for the State and perused the record.

2. The present application u/s 482 Cr.P.C. has been filed against the order dated 06.09.2023 passed by the Additional District and Sessions Judge/Special Judge (POCSO Act), Court No.1, Firozabad, by which the Criminal Revision No. 88 of 2023 (Smt. Pratibha Jain Vs. State of U.P. and Others) filed against the order dated 16.05.2023 passed by Chief Judicial Magistrate, Firozabad in Misc. Case No. 892 of 2023 (Pratibha Jain Vs. Vinay Jain and Others) rejecting the application under Section 156(3) Cr.P.C. for registration of FIR has been dismissed.

3. Learned counsel for the applicant has submitted that the applicant tried to lodge an FIR in respect of the incident, however, the Police did not lodge her report, therefore, an application dated 17.04.2023 under Section 156(3) Cr.P.C. was filed by the applicant before the Chief Judicial Magistrate, Firozabad with the prayer that a direction be given to the concerned police station to lodge her report and investigate the same. The learned Magistrate, after considering the entire allegations made in the application and material available on record, directed the application to be registered as a complaint and further directed for recording the statement of the complainant under section 200 Cr.P.C. vide his order dated 16.05.2023.

4. 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 against the opposite party nos.2 to 7, as such, it was incumbent upon the learned Magistrate to direct the police to register a case

under Section 154 CrPC and investigate the same, however, learned Magistrate has illegally rejected her application filed under Section 156(3) CrPC, vide order dated 16.05.2023. Even the Revisional Court did not consider the matter in right perspective and illegally upheld the order dated 16.05.2023 passed by the learned Magistrate, vide order dated 06.09.2023.

5. Learned counsel for the applicant has placed implicit reliance upon the decision of the Hon'ble Apex Court reported in **(2014) 2 SCC 1 Lalita Kumari Vs. Govt. of U.P. and Others.**

6. Per contra, learned A.G.A. has 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. and investigate the same or may treat the application under Section 156(3) Cr.P.C. as a complaint and proceed further by recording the statements of the witnesses under Sections 200 and 202 Cr.P.C.

7. Learned AGA has further submitted that there is no provision that learned Magistrate may not treat the application under Section 156(3) Cr.P.C. as a complaint and make an inquiry by recording the statements of the witnesses under Sections 200 and 202 Cr.P.C.

8. Looking to the circumstances that the applicant has full knowledge of the facts of the case and accused as well as his witnesses can lead his evidence in the court, the view taken by the learned Magistrate in treating the application under Section 156(3) Cr.P.C. as a complaint is just, proper, legal and do not call for any interference.

9. It is well settled principle of law that on an application under Section 156(3) Cr.P.C. filed by the applicant, the Magistrate in its discretion may direct for registration of F.I.R. under Section 154 Cr.P.C. or treat the same as a complaint and proceed further by recording the statements of the witnesses 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)**.

10. From the aforesaid decisions, it is ample clear that upon an application received under Section 156(3) Cr.P.C., which discloses cognizable offences, 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 Sections 200 and 202 Cr.P.C. and in case, if the Magistrate, during the course of enquiry, feels that any investigation is required, he may under Section 202 Cr.P.C. direct for investigation to be made by the police officer or by such other person, as he thinks fit, for the purpose of deciding whether or not there is sufficient ground for proceeding in the present case.

11. 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, impugned orders passed by the learned Magistrate as well as Revisional Court do not suffer from any illegality, impropriety or jurisdictional error so as to warrant any interference.

12. In view of the aforesaid facts, I am not inclined to exercise my inherent jurisdiction under Section 482 CrPC.

13. This application under Section 482 CrPC is devoid of merits and is accordingly **dismissed**.

Order Date :- 13.12.2023

Nadim