

Court No. - 86

Case :- APPLICATION U/S 482 No. - 41351 of 2023

Applicant :- Smt Jafari

Opposite Party :- State Of U.P. And 3 Others

Counsel for Applicant :- Adil Khan

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 19.5.2023 passed by the Additional Sessions Judge/Special Judge (POCSO Act), Court No.3, Amroha by which the revision filed against the order dated 23.8.2016 rejecting the application u/s 156(3) Cr.P.C. for registration of FIR has been dismissed.
3. Brief facts giving rise to this application are that an application u/s 156 (3) Cr.P.C. was filed by the applicant with the allegation that opposite parties have forcibly taken possession of land notified vide gata no. 818, 524 and on raising grievance against the said act and conduct of the opposite parties, opposite parties hurled abuses and extended death threats to her to vacate the land. It is further stated that the applicant tried to lodge FIR in respect of the said incident, however, the Police did not lodge his report, therefore, an application u/s 156 (3) Cr.P.C. was filed by the applicant with the prayer that a direction be given to the concerned police station to lodge her report and investigate the same.
4. Learned counsel for the applicant has submitted that from the allegations made in the application though cognizable offence is disclosed, yet the learned magistrate has not directed the police to register the F.I.R. and has illegally rejected her application filed under section 156(3) Cr.P.C. vide order dated 23.8.2016.
5. Being aggrieved and dissatisfied by the said order dated 23.8.2016, the applicant preferred a Criminal Revision No. 283 of 2022, which too has been dismissed by the Revisional Court vide order dated 19.5.2023.
6. Being aggrieved and dissatisfied by the said order dated 19.5.2023 passed by Additional Sessions Judge/Special Judge (POCSO Act), Court No.3, Amroha, the present application u/s 482 Cr.P.C. has been filed.
7. Learned counsel for the applicant has submitted that since cognizable offence is disclosed against the opposite party nos. 2 to 4, who are residing in same village therefore, it was incumbent upon the court below to register an FIR.

8. Per contra, learned A.G.A. has submitted that though it is provided that the police official ought to register F.I.R. whenever it is shown that cognizable offence is disclosed, however, in case the police fails to do so, the modalities as set out in section 190 read with section 200 Cr.P.C. of the code are to be adopted as held in the case of **Aleque Padamsee Vs Union of India, 2007 (6) SCC 171.**

"7. Whenever any information is received by the police about the alleged commission of offence which is a cognizable one there is a duty to register the FIR. There can be no dispute on that score. The only question is whether a writ can be issued to the police authorities to register the same. The basic question is as to what course is to be adopted if the police does not do it. As was held in All India Institute of Medical Sciences's case (supra) and re-iterated in Gangadhar's case (supra) the remedy available is as set out above by filing a complaint before the Magistrate. Though it was faintly suggested that there was conflict in the views in All India Institute of Medical Sciences's case (supra), Gangadhar's case (supra), Hari Singh's case (supra), Minu Kumari's case (supra) and Ramesh Kumari's case (supra), we find that the view expressed in Ramesh Kumari's case (supra) related to the action required to be taken by the police when any cognizable offence is brought to its notice. In Ramesh Kumari's case (supra) the basic issue did not relate to the methodology to be adopted which was expressly dealt with in All India Institute of Medical Sciences's case (supra), Gangadhar's case (supra), Minu Kumari's case (supra) and Hari Singh's case (supra). The view expressed in Ramesh Kumari's case (supra) was re- iterated in Lallan Chaudhary and Ors. V. State of Bihar (AIR 2006 SC 3376). The course available, when the police does not carry out the statutory requirements under Section 154 was directly in issue in All India Institute of Medical Sciences's case (supra), Gangadhar's case (supra), Hari Singh's case (supra) and Minu Kumari's case (supra). The correct position in law, therefore, is that the police officials ought to register the FIR whenever facts brought to its notice show that cognizable offence has been made out. In case the police officials fail to do so, the modalities to be adopted are as set out in Sections 190 read with Section 200 of the Code."

9. Further in **Criminal Revision No. 375 of 2023, Rameshwari Vs. State of U.P. and others, this Court has held as under:**

"The disclosure of cognizable offence cannot be construed to mean replication of words or the facts in such a manner as may fit within four corners of an offence defined in statutes. This is a common knowledge that applications under Section 156(3) Cr.P.C. may be drafted cleverly and may be dotted with sham assertions or half truths with legal advice, so as to persuade the courts to spring into action. If such a narrow and short sighted interpretation is done, it will be like playing in the hands of unscrupulous litigant. While passing an order on application under Section 156(3) Cr.P.C. the court is expected to

apply its judicial mind. He is expected to be judicious, discreet and cautious and not to be swayed by mere use of certain words and legal terminology. He can certainly look for substance in the allegations and existence of life in the assertions"

10. Thus, it is to be noted that despite dismissal of the revision filed by the applicant, the revisionist still have certain remedies open in law by adopting modalities as set out under section 190 read with section 200 of the Code. Further in the instant case, both courts below have passed a well considered and detailed order rejecting the application u/s 156(3) Cr.P.C., which at this stage needs no interference in exercise of power under Section 482 Cr.P.C.

11. The present application u/s 482 Cr.P.C. is devoid of merits and is accordingly dismissed.

Order Date :- 8.11.2023

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