

Court No. - 93

Case :- APPLICATION U/S 482 No. - 45594 of 2023

Applicant :- Ramasare Prasad

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

Counsel for Applicant :- Satyendra Kumar
Tripathi, Bhupendra Pal

Counsel for Opposite Party :- G.A.

Hon'ble Manoj Bajaj, J.

Applicant-Ramasare Prasad has filed this application under Section 482 Code of Criminal Procedure to challenge the order dated 26th October, 2023 passed by Special Judge (SC/ST Act), Varanasi, in Criminal Case No. 610 of 2023 (Ramasare Prasad vs. Ram Murat Yadav and others) whereby his complaint filed under Section 156(3) Cr.P.C. seeking direction for registration of case and investigation has been treated as a complaint by directing him to get the statements of the witnesses recorded under Section 200 Cr.P.C.

Learned counsel refers to the complaint dated 19th September, 2023 and submitted that a sum of Rs. 18,000/- was borrowed by the accused from the applicant, when he was in financial difficulty, and when the applicant demanded return of the money after two months in July, 2023, then the borrower-accused refused. Later, the accused abused the complainant and had also given beatings to the applicant, therefore, according to the learned counsel, the complaint discloses commission of a cognizable offences and the court ought to have exercised its jurisdiction under Section 156(3) Cr.P.C. by ordering the registration of case and investigation.

He submits that the impugned order is against the law, therefore, the interference by this Court is warranted. In support of his case, learned counsel has relied upon the decision delivered by this Court

dated 31st August, 2022 in ***Application U/S 482 No. 26614 of 2022; titled Anjana Patel vs. State of U.P.***

Learned counsel for the applicant has been heard and perused the case file.

By now, it is settled law that the jurisdiction under Section 156(3) Code of Criminal Procedure is to be exercised by the Magistrate, if, the complaint discloses commission of a cognizable offence, but where the allegations fall short of the said requirement, the Court may adopt the alternative procedure contemplated under Chapter XV Code of Criminal Procedure. In other words, while exercising the powers vested in Magistrate under Section 156(3) Cr.P.C., a reminder is sent to the police to its duty, as in such cases where a *prima facie* commission of cognizable offence is made out, it is for the police to investigate the case. In this regard, reference can be made to the decision of this Court in ***Criminal Revision No. 4739 of 2023; titled Sumit Jain vs. State of U.P. and 4 others.***

Now while examining the facts and circumstances of this case, this Court finds that the averments made in the complaint are lacking in material particulars relating to the occurrence(s) split in two parts and it cannot be said that the complaint in fact *prima facie* discloses commission of cognizable offence(s). Therefore, in such a case, the alternative mode of proceeding with the complaint through the procedure contemplated under Section 200 Cr.P.C. onwards would be appropriate.

A perusal of the impugned order also reveals that the Magistrate has rightly adopted the alternative procedure to try the complaint as a complaint case, thereby giving an opportunity to the applicant to make out a *prima facie* case in respect of the commission of alleged offences.

The citation relied upon by the applicant is not applicable in the case in hand as it is conceded by the learned counsel that in the said case the

complaint of complainant under Section 156(3) Cr.P.C. was dismissed without even affording any opportunity to the complainant to proceed with his case as a complaint case.

Resultantly, without meaning any expression of opinion on the merit of this case, no case is made for exercise of inherent powers under Section 482 Cr.P.C.

Dismissed.

Order Date :- 14.12.2023

Brijesh