

Court No. - 27

Case :- APPLICATION U/S 482 No. - 1072 of 2024

Applicant :- Ram Bahadur Upadhayay

Opposite Party :- State Of U.P. Thru. Secy. (Home), U.P. Lucknow
And 4 Others

Counsel for Applicant :- Aasif Razzaque Khan

Counsel for Opposite Party :- G.A., Prashast Puri

Hon'ble Subhash Vidyarthi, J.

1. Heard Sri Aasif Razzaque Khan, the learned counsel for the applicant, Ms. Charu Singh, the learned A.G.A for the State and Sri Prashast Puri, the learned counsel for the opposite parties no.2.

2. By means of the instant application filed under Section 482 Cr.P.C., the applicant has challenged the validity of an order dated 19.04.2023 passed by the learned Additional C.J.M., Faizabad in Criminal Misc Case No.186 of 2022 whereby the application filed by the applicant under Section 156(3) Cr.P.C. has been rejected on the ground that as per the minute enquiry report submitted by the police, allegation of commission of offence could not be established. The applicant has also challenged the validity of the judgment and order dated 21.10.2023 passed by the Additional District and Sessions Judge, Court No.12 Faizabad dismissing the revision filed against the aforesaid order.

3. The submission of the learned counsel for the applicant is that the averments made in the application under Section 156(3) Cr.P.C. clearly indicate commission of cognizable offence by opposite party Nos.2 to 5.

4. Alleged 'minute enquiry' report submitted by the police was without any authority as the police got right to carry out investigation only after registration of an FIR or after issuance of a direction by the Magistrate, none of which was done in the present case.

5. Notice was issued to the opposite party no.2-5 by means of an order dated 12.02.2024. The office has submitted a report that the notice has been served on all the opposite parties but only the opposite party no.2 had put in appearance through Sri Prashast Puri, Advocate and he has advanced submissions in opposition of the application.

6. The learned counsel for the opposite party no.2 has submitted that while deciding an application under Section 156(3) Cr.P.C, the Magistrate empowered to analyze the allegations levelled in the complaint and to come to a conclusion as to whether a case for investigation by the police or a case for lodging a complaint is made out or not and the Magistrate is not bound to order for registering of an F.I.R whenever an application under Section 156(3) Cr.P.C has been filed.

7. The learned counsel for the opposite party no.2 has submitted that the allegations levelled in the application under Section 156(3) Cr.P.C at the most make out a civil grievance of the applicant and it does not make out commission of any cognizable offence by the accused persons.

8. A perusal of the application under Section 156(3) Cr.P.C indicates that the applicant had alleged that he had entered into an agreement to sell a tractor to the opposite party no.2, for Rs. 2,25,000/- only and the opposite party no.2 had agreed that he will sell the tractor along with the cultivator within a period of one month and will pay the amount to the applicant and the applicant had handed over the original documents of the tractor to the opposite party no.2. The applicant further stated that the opposite party no.2 did not pay him the sale consideration for the tractor, and he came to know that the tractor had been sold without having him gone to the transport office, on the basis of a forged report prepared by the officials of the transport department on 21.09.2021, on the basis of forged documents.

9. The allegations levelled in the application under Section 156(3) Cr.P.C clearly make out a commission of cognizable offences by the accused persons and these allegations do not make out a civil wrong.

10. The learned counsel for the opposite party no.2 has relied on decision of Hon'ble Supreme Court in the case of **Sakiri Vasu Vs. State of Uttar Pradesh and Others; 2008 2 SCC 409**, wherein the Hon'ble Supreme Court held that:-

"11. In this connection we would like to state that if a person has a grievance that the police station is not registering his FIR under Section 154 Cr.P.C., then he can approach the Superintendent of Police under Section 154(3) Cr.P.C. by an application in writing. Even if that does not yield any satisfactory result in the sense that either the FIR is still not registered, or that even after registering it no proper investigation is held, it is open to the aggrieved person to file an application under Section 156 (3) Cr.P.C. before the learned Magistrate concerned. If such an application under Section 156 (3) is filed before the Magistrate, the Magistrate can direct the FIR to be registered and also can direct a proper investigation to be made, in a case where, according to the aggrieved person, no proper investigation was made. The Magistrate can also under the same provision monitor the investigation to ensure a proper investigation.

14. Section 156 (3) states: Any Magistrate empowered under Section 190 may order such an investigation as abovementioned. The words 'as abovementioned' obviously refer to Section 156 (1), which contemplates investigation by the officer in charge of the Police Station.

15. Section 156(3) provides for a check by the Magistrate on the police performing its duties under Chapter XII Cr.P.C. In cases where the Magistrate finds that the police has not done its duty of investigating the case at all, or has not done it satisfactorily, he can issue a direction to the police to do the investigation properly, and can monitor the same"

11. The learned counsel for the opposite party no.2 has also relied on

decision of Hon'ble Supreme Court in the case of **Lalita Kumari v. Govt. of U.P., (2014) 2 SCC 1**, wherein the Hon'ble Supreme Court held that:-

"(i) Registration of FIR is mandatory under Section 154 of the Code, if the information discloses commission of a cognizable offence and no preliminary inquiry is permissible in such a situation.

(ii) If the information received does not disclose a cognizable offence but indicates the necessity for an inquiry, a preliminary inquiry may be conducted only to ascertain whether cognizable offence is disclosed or not.

(iii) If the inquiry discloses the commission of a cognizable offence, the FIR must be registered. In cases where preliminary inquiry ends in closing the complaint, a copy of the entry of such closure must be supplied to the first informant forthwith and not later than one week. It must disclose reasons in brief for closing the complaint and not proceeding further.

(iv) The police officer cannot avoid his duty of registering offence if cognizable offence is disclosed. Action must be taken against erring officers who do not register the FIR if information received by him discloses a cognizable offence.

(v) The scope of preliminary inquiry is not to verify the veracity or otherwise of the information received but only to ascertain whether the information reveals any cognizable offence.

(vi) As to what type and in which cases preliminary inquiry is to be conducted will depend on the facts and circumstances of each case. The category of cases in which preliminary inquiry may be made are as under:

(a) Matrimonial disputes/ family disputes

(b) Commercial offences

(c) Medical negligence cases

(d) Corruption cases

(e) Cases where there is abnormal delay/laches in initiating criminal

prosecution, for example, over 3 months delay in reporting the matter without satisfactorily explaining the reasons for delay.

The aforesaid are only illustrations and not exhaustive of all conditions which may warrant preliminary inquiry.

(vii) While ensuring and protecting the rights of the accused and the complainant, a preliminary inquiry should be made time bound and in any case it should not exceed 7 days. The fact of such delay and the causes of it must be reflected in the General Diary entry.

(viii) Since the General Diary/Station Diary/Daily Diary is the record of all information received in a police station, we direct that all information relating to cognizable offences, whether resulting in registration of FIR or leading to an inquiry, must be mandatorily and meticulously reflected in the said Diary and the decision to conduct a preliminary inquiry must also be reflected, as mentioned above."

12. When we examine the fact of the present case in light of the law laid down by the Hon'ble Supreme Court in the aforesaid cases, it appears that the allegations levelled in the application under Section 156(3) Cr.P.C clearly make out a case of commission of cognizable offences by the accused persons. In these circumstances, the Magistrate ought to have directed for registration of an F.I.R and an investigation would have followed registration of the F.I.R. The alleged 'minute inquiry' conducted by the police without registration of any F.I.R, is not contemplated by the provisions of Criminal Procedure Code. The police can only carry out an investigation after registration of an F.I.R where the allegations make out a commission of a cognizable offence. A preliminary enquiry is permissible in certain circumstances when the information does not disclose a cognizable offence, which is not the case here.

13. In view of the aforesaid facts, the application is **allowed** and the impugned order dated 19.04.2023 passed by the learned Additional Chief Judicial Magistrate, Faizabad in Criminal Misc Case No.186 of

2022, whereby the application filed by the applicant under Section 156(3) Cr.P.C. is set aside.

14. The Magistrate is directed to pass suitable orders on the application under Section 156(3) Cr.PC afresh within a period of two weeks from the date of receipt of certified copy of this order, in light of observations made in this order.

(Subhash Vidyarthi,J.)

Order Date :- 20.3.2024
Preeti.