

Court No. - 11

Case :- APPLICATION U/S 482 No. - 2274 of 2024

Applicant :- Dost Mohammad And Another

Opposite Party :- State Of U.P. Thru. Prin. Secy. Deptt. Home Lko. And Another

Counsel for Applicant :- Dinesh Kumar Singh (D.K.Singh)

Counsel for Opposite Party :- G.A.

Hon'ble Rajesh Singh Chauhan,J.

1. Heard Sri Dinesh Kumar Singh, learned counsel for the petitioners, Ms. Nusrat Jahan, learned AGA for the State and Sri R.B.S. Rathaur, Advocate who has filed 'Vakalatnama' on behalf of opposite party no. 2, same is taken on record.

2. By means of this petition the petitioners have prayed following relief :

"Set aside the impugned judgment and order dated 07.02.2024 passed by the learned Additional Session Judge Court No. 1 Faizabad in Criminal Revision No. 187/2021 (Mohammad Ahmad Vs. State and others). contained as Annexure No. 1 to the present petition, with all consequential benefits.

It is further prayed that this Hon'ble Court may kindly be pleased to set aside the consequential order dated 20.02.2024 passed by the Judicial Magistrate-II, Faizabad/Ayodhya in complaint case no 1217/2021 (Mohammad Ahmad Vs. Dost Mohammad and others), contained as Annexure No. 2 to the present petition."

3. The precise contention of learned counsel for the petitioners is that though the complaint / application filed by the opposite party no. 2 u/s 156(3) Cr.P.C. on 28.9.2021 is a counter-blast to the F.I.R. bearing No. 0346 of 2021 u/s 420, 467, 468, 471, 504, 506 IPC, P.S. Kotwali Rudauli, District Ayodhya lodged from the side of the petitioners on 30.7.2021 but when on such application the Magistrate passed an order on 11.11.2021 (Annexure no. 5) referring the decision of Division Bench of this Court in re: **Sukhwasi vs. State of U.P. : 2007(59) ACC 739** to treat such application as complaint fixing the date for the statement of the complainant u/s 200 Cr.P.C., the opposite party no. 2 who is applicant of that application should have not challenged that order before the revisional court saying that on those allegations which have been leveled against the petitioners the only recourse was to issue direction to lodge F.I.R. inasmuch as this is a trite law that after recording the statement u/s 200 and 202 Cr.P.C. it is incumbent upon the learned Magistrate to make inquiry or direct investigation u/s 202(1) and if in any case the learned court concerned finds that the allegation may not be adjudicated on the basis of

proceedings of complaint case, the magistrate may very well direct to lodge F.I.R. In the present case the revisional court cited the decision of this Court at Allahabad in re: **Mangalsen vs. State of U.P. passed in Criminal Misc. Application No. 7651 of 2009** and the Apex Court in re: **Lalita Kumari vs. State of Uttar Pradesh and others : 2014 (2) SCC 1** to set aside the order dated 11.11.2021 passed by the Magistrate court directing the magistrate to issue direction for lodging the F.I.R. Pursuant thereto the Magistrate has passed order dated 20.2.2024 referring the decision of **Mangalsen (supra)** to lodge F.I.R. pursuant to the aforesaid application filed u/s 156(3) Cr.P.C.

4. Sri D.K. Singh has stated that the impugned order dated 20.2.2024 (supra) is in-fact the compliance order making compliance of the order of the revisional court dated 7.2.2024 inasmuch as at the first instance and at the very instance the learned Magistrate has passed order dated 11.11.2021 (supra). Sri Singh has further submitted that the judgment so cited by the revisional court are not applicable in the present case inasmuch as the direction of Court in re: **Mangalsen (supra)** passed by this Court has been diluted by this Court in **Sukhwasi (supra)**. In the judgment of **Sukhwasi (supra)** the reference has been indicated in para 1 and its answer has been indicated in para 23 which read as under :

"Whether the Magistrate is bound to pass an order on each and every application under Section 156(3) Criminal Procedure Code containing allegations of commission of a cognizable offence for registration of the F.I.R. and its investigation by the police even if those allegations, prima-facie, do not appear to be genuine and do not appeal to reason, or he can exercise judicial discretion in the matter and can pass order for treating it as 'complaint' or to reject it in suitable cases"?

"23. The reference is, therefore, answered in the manner that it is not incumbent upon a Magistrate to allow an application under Section 156(3) Criminal Procedure Code and there is no such legal mandate. He may or may not allow the application in his discretion. The second leg of the reference is also answered in the manner that the Magistrate has a discretion to treat an application under section 156(3) Criminal Procedure Code as a complaint."

5. He has further submitted that in the judgment of **Lalita Kumari (supra)** there is no specific direction of the Apex Court in respect of section 156(3) but it was relating to section 154 Cr.P.C., however, as an obiter dicta, some reference has been given in respect of section 156(3) Cr.P.C. Therefore, Sri Singh has stated that the impugned order of the revisional court is liable to be set aside.

6. Sri Singh has also referred the dictum of Apex Court in re: **Madhu Limaye vs. State of Maharashtra : AIR 1978 Supreme**

Court 47 to state that taking cognizance of the application of the opposite party no. 2 treating the same as complaint case directing to record the statement u/s 200 Cr.P.C., vide order dated 11.11.2021, is an interlocutory order and interlocutory order may not be assailed before the revisional court, therefore, in that way too the order passed by the revisional court is unwarranted and uncalled for.

7. Sri R.B.S. Rathaur, learned counsel for the private opposite party as well as learned AGA have at the very outset taken objection regarding maintainability of this petition by submitting that the present petitioners have got no locus to file this petition inasmuch as neither the magistrate had further proceeded pursuant to the order dated 11.11.2021 issuing summons to them nor any F.I.R. has been lodged against them in compliance of the order of the revisional court as well as the subsequent order of the magistrate. Therefore, this petition may be dismissed on the aforesaid count alone. They have further submitted that serious allegations have been leveled in an application filed u/s 156(3) Cr.P.C. wherein besides some other allegations the allegation of loot has been leveled against the applicant, therefore, on such allegation the magistrate would not be able to decide the issue on the basis of complaint case as in that case the F.I.R. must have been registered. Therefore, the opposite party no. 2 has rightly filed revision before the revisional court and revisional court has not erred in setting aside the order dated 11.11.2021 passed by the magistrate directing the magistrate to issue direction to lodge F.I.R. However, so far as the submission of Sri D.K. Singh is concerned to the effect that the opposite party no. 2 might have not approached the revisional court by filing revision against the interlocutory order inasmuch as the order dated 11.11.2021 was an interlocutory order, in view of the decision of Apex Court in re: **Madhu Limaye (supra)** they have stated that they may be given some time to address on the aforesaid legal point.

8. Having heard learned counsel for the parties and having perused the material available on record and also having regard of the judgments of the constitutional courts, undisputedly, it is a trite law that before issuing summons against the prospective accused on the complaint the mandatory exercise u/s 202(1) Cr.P.C. must be adhered to by the Magistrate and if the learned court of magistrate finds on the basis of such aforesaid inquiry that for proper adjudication of the allegation in question the appropriate recourse would be to lodge F.I.R., the magistrate may very well direct to register F.I.R. at that stage but admittedly such stage had not arrived by now because immediately after passing the order dated 11.11.2021 the opposite party no. 2 has filed the revision. Further, it may not be

disputed that registering a complaint case treating the application u/s 156(3) Cr.P.C. as a complaint case and directing to record the statement of complainant u/s 200 Cr.P.C. is an interlocutory order as it has not attained the finality, therefore, in view of the dictum of Apex Court in re: **Madhu Limaye (supra)** the revisional court may not set aside the order of the magistrate dated 11.11.2021. It is also true that the allegations are serious wherein the allegation of loot has also been made and as per various decisions of this Court and Apex Court, in the cases wherein the allegation of cognizable offences are there including the allegation of loot etc., the appropriate recourse must be decided by the learned magistrate before proceeding further inasmuch as the trite law on the subject may not be ignored by any subordinate court.

9. Therefore, in view of the above, the impugned order dated 7.2.2024 passed by the learned Sessions Judge, Court no. 1, Faizabad in Criminal Revision No. 187/2021 (Mohammad Ahmad vs. State and others) and the consequential order 20.2.2024 passed by the Judicial Magistrate-II, Faizabad / Ayodhya in Complaint Case no. 1217/2021 (Mohammad Ahmad vs. Dost Mohammad and others) are hereby **quashed and set aside** with the expectation that while proceeding further pursuant to the order dated 11.11.2021, which has been revived by this order, the learned magistrate shall carefully follow the mandatory compliance of section 202(1) Cr.P.C. and shall follow the settled proposition of law on the subject which shall be placed by the respective counsel and the observations of this order may not influence and the learned magistrate shall pass appropriate order strictly in accordance with law. Further, the magistrate shall take independent decision on the basis of provision of law and the settled position on the subject.

10. It is made clear that the quashing of the impugned revisional order and consequential order of the magistrate may not be treated as if the learned court of magistrate should only treat the application filed by the opposite party no. 2 only as a complaint but the magistrate court shall ensure that the appropriate justice is done with the parties strictly in accordance with law.

11. In view of the above, instant petition is **allowed**.

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(Rajesh Singh Chauhan, J.)

Order Date :- 11.3.2024/Om