

Court No. - 15

Case :- APPLICATION U/S 482 No. - 3890 of 2024

Applicant :- Uma Devi

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

Counsel for Applicant :- Shailendra Kumar Tiwari, Amrit Kumar Tiwari

Counsel for Opposite Party :- G.A.

Hon'ble Karunesh Singh Pawar,J.

Heard Shri Rashid Ahmad, learned counsel for the applicant and learned A.G.A. for respondent State.

Notices to respondent no.2 are dispensed with.

The present application has been filed by the applicant for quashing of the order dated 18.3.2024 passed in Criminal Revision No.103 of 2023 (Uma devi vs. State of U.P. and another) and order dated 30.5.2023 passed in Criminal Misc. Case No. 780 of 2023 (Uma Devi vs. Chhotu Verma).

Learned counsel for the applicant submits that the application under Section 156(3) Cr.P.C. was moved by the applicant alleging that prior to 16.4.2023 respondent no.2 on pretext of false promise of marriage continuously exploited the applicant and committed sexual intercourse with the applicant. When the applicant asked him to marry he refused to marry and thereafter he threatened to kill her and also

abusing her..

Learned counsel for the applicant further submits that learned Magistrate vide the impugned order dated 30.5.2023 has treated the application under Section 156(3) as a complaint case. Aggrieved by the aforesaid order dated 30.5.2023, a criminal revision was filed by the revisionist, which was also dismissed upholding the order of the learned Magistrate.

Learned counsel for the applicant further submits that it is a matter of sexual assault. The applicant is the victim. She has already been traumatized. These kind of offence requires thorough and proper investigation and therefore, learned Magistrate ought to have exercise its jurisdiction under Section 156(3) Cr.P.C. or should have directed the police to lodge an FIR and investigate the matter. In support of his contention he has relied upon the judgement of Hon'ble Supreme Court in the case of **XYZ vs. State of M.P. and others reported in 2023 (1) JIC 538 (SC)**. Emphasis is on paragraphs 15,24,25 and 29 of the judgement.

Perused the record.

Perusal of the judgment of XYZ vs. State of M.P. (supra) shows that Hon'ble Supreme Court has laid down the law that in the cases alleging sexual harassment, sexual assault or any

similar criminal allegation where the victim has already been traumatized, the Courts should not put further burden on the complainant and Magistrate should direct the police to investigate under Section 156(3) Cr.P.C. The relevant paragraphs (15,24,25 and 29) of the judgment of XYZ (surpa) are extracted below:-

"15. First, we find it appropriate to reiterate the duty of police to register an FIR whenever a cognizable offence is made out in a complaint. A Constitution Bench of this Court in Lalita Kumari v. Government of Uttar Pradesh⁵ has laid out the position of law as summarized in the following extract of the decision:

"119. Therefore, in view of various counterclaims regarding registration or non-registration, what is necessary is only that the information given to the police must disclose the commission of a cognizable offence. In such a situation, registration of an FIR is mandatory. However, if no cognizable offence is made out in the information given, then the FIR need not be registered immediately and perhaps the police can conduct a sort of preliminary verification or inquiry for the limited purpose of ascertaining as to whether a cognizable offence has been committed. But, if the information given clearly mentions the commission of a cognizable offence, there is no other option but to register an FIR forthwith. Other considerations are not relevant at the stage of registration of FIR, such as, whether the information is falsely given, whether the information is genuine, whether the information is credible, etc. These are the issues that have to be verified during the investigation of the FIR. At the stage of registration of FIR, what is to be seen is merely whether the information given ex facie discloses the commission of a cognizable offence. If, after investigation, the information given is found to be false, there is always an option to prosecute the complainant for filing a false FIR."

24. Therefore, in such cases, where not only does the Magistrate find the commission of a cognizable offence alleged on a prima facie reading of the complaint but also such facts are brought to the Magistrate's notice which clearly indicate the need for police investigation, the discretion granted in Section 156(3) can only be read as it being the Magistrate's duty to order the police to investigate. In cases such as the present, wherein, there is alleged to be documentary or other evidence in the physical possession of the accused or other individuals which the police would be best placed to investigate and retrieve using its powers under the CrPC, the matter ought to be sent to the police for investigation.

25. Especially in cases alleging sexual harassment, sexual assault or any similar criminal allegation wherein the victim has possibly already been traumatized, the Courts should not further burden the complainant and should press upon the police to investigate. Due regard must be had to the fact that it is not possible for the complainant to retrieve important evidence regarding her complaint. It may not be possible to arrive at the truth of the matter in the absence of such evidence. The complainant would then be required to prove her case without being able to bring relevant evidence (which is potentially of great probative value) on record, which would be unjust.

29. For the above reasons, we are inclined to set aside the impugned judgement of the High Court and to direct that the JMFC Gwalior shall, in terms of the observations contained above, order an investigation by the police under Section 156(3) CrPC. Having regard to all the facts and circumstances, including the need for a fair investigation, we direct that the investigation shall be supervised by a woman officer not below the rank of Superintendent of Police to be nominated by the DIG of the zone concerned. The judgement of the High Court dated 6 January 2022 shall accordingly stand set aside. The directions which have been issued by the JMFC to the effect that the complaint could be treated as a complaint case shall accordingly, to that extent, stand set aside and be substituted in terms of the directions which have been issued above."

Learned A.G.A. though has opposed the application, however, could not dispute the settled position of law as stated above.

Considering the above and in view of the judgment of Hon'ble Supreme Court in the case of XYZ (supra) the impugned order dated 18.3.2024 passed in Criminal Revision No.103 of 2023 (Uma devi vs. State of U.P. and another) and order dated 30.5.2023 passed in Criminal Misc. Case No. 780 of 2023 (Uma Devi vs. Chhotu Verma) are set aside. The matter is remanded back to the learned Magistrate concerned to pass afresh order strictly in view of the judgment of Hon'ble Supreme Court in the case of XYZ(supra).

Order Date :- 27.4.2024
Madhu