

Court No. - 29**Case :-** CRIMINAL REVISION No. - 295 of 2012**Revisionist :-** Madhukar Jetely**Opposite Party :-** State Of U.P. And Ors.**Counsel for Revisionist :-** Ashok Kumar Verma, Viplav Sharma**Counsel for Opposite Party :-** Govt. Advocate, Arun Sinha, Siddhartha Sinha**Hon'ble Mrs. Renu Agarwal, J.**

1. Instant criminal revision under Sections 397/401 Cr.P.C. has been preferred against the impugned judgment and order dated 27.08.2012 passed in Criminal Revision No.136 of 2012 (Sanjay Sinha and Ors. Vs. The State and Anr.) passed by the District & Sessions Judge, Lucknow by which the learned District and Sessions Judge, Lucknow has partly allowed the revision and set-aside the order of CJM by which the opposite party No. 2 to 4 were summoned under Section 506 I.P.C.
2. When the case was called up today for hearing, none appeared on behalf of the revisionist. It transpires from the order sheet dated 05.05.2023 that none was present on behalf of the revisionist on that day also.
3. Heard Mr. Arun Sinha, learned counsel for opposite parties and perused the entire material brought on record.
4. Perusal of the revision reveals that some civil dispute was pending between the revisionist and the private respondents who were empanelled with Employees State Insurance Corporation, New Delhi (hereinafter referred to as "ESIC"). The revisionist acceding to the request of the accused mutually agreed to provide his consultancy service on the payment of 20 per cent of the amount which was to be paid by accused from time to time and further to continue to pay the aforesaid 20 per cent from amount received from ESIC. Opposite party No. 2 to 4 failed to comply with the agreement and the payments due against the consultancy services of revisionist has not been paid, therefore, an application

under Section 156(3) Cr.P.C. was moved by the revisionist for registration of F.I.R. against the opposite party Nos. 2 to 4. Trial Court called for report from police station concerned and finding that no case is registered in police station and considering the facts disclosed in the application moved in the application under Section 156(3) Cr.P.C. registered the application as complaint case on 12.12.2011 and after recording of statement of revisionist under Section 200 and statement of witnesses under Section 202 Cr.P.C., summoned the accused-opposite party Nos. 2 to 4 under Section 506 I.P.C. vide order dated 06.02.2012. Learned C.J.M. specifically mentioned in the his order that the dispute between the parties is civil/contractual in nature that can be decided by the Civil Court on the basis of evidence produced before it, hence, the opposite parties No. 2 to 4 were summoned only under Section 506 I.P.C.

5. Aggrieved with the order of the learned C.J.M., opposite parties No. 2 to 4 (proposed accused) filed a revision before the Court of Sessions and Sessions Court set-aside the summoning order dated 06.02.2012. It is pertinent to mention here that summoning order dated 06.02.2012 was not challenged by the revisionist-Madhukar Jetely.

6. The present revision is filed on 03.09.2012 directly to this Court without availing the opportunity of filing revision before the Sessions Court. It is also mentioned in the revision itself that the Sessions Judge has acted illegally and with material irregularity in exercise of his jurisdiction in overlooking that while exercising powers under Section 397 Cr.P.C., the powers exercisable by the Hon'ble High Court under Section 482 Cr.P.C. in rarest of rare cases could not be exercised. It is also revealed in the second supplementary affidavit that learned CJM was not empowered to convert the application moved by him under Section 156(3) into complaint. The aforesaid order of learned CJM ex facie suffers error as the learned CJM without taking cognizance of the matter wrongfully ordered the registration of case as complaint which is not permissible and beyond his jurisdiction, accordingly, all subsequent proceedings arising therefrom are without jurisdiction and are liable to be set-aside. Therefore, the subsequent proceedings are also liable to be vitiated and deserved

to be quashed.

7. In the counter affidavit, opposite party No. 2 to 4 simply controverted the factual matrix given by revisionist and submitted that the revisionist along with filing the application under Section 156(3) Cr.P.C. also moved an application to the police station-Hajratganj. Opposite party Nos. 2 to 4 filed the statement of witnesses recorded under Section 202 Cr.P.C. and submitted that there are multitudes of contradictions in the statement of witnesses and on the basis of statements, opposite parties were summoned by the Trial Court under Section 506 I.P.C only which was not sustainable in the eyes of law, therefore, learned Sessions Judge set-aside the order of Magistrate by the impugned order dated 27.08.2012.

8. So far as summoning of opposite parties under Section 506 is concerned, learned Sessions Judge has dealt with the question in detail in his impugned judgment. Learned Sessions Judge relied upon the Judgment of Hon'ble the Supreme Court in case of **Inder Mohan Goswami Vs. State of Uttaranchal** reported in (2007) 12 SCC 1, **Dharam Pal and Anr. Vs. State of Uttarakhand** reported in 2012 (77) ACC 775 and **Madhavrao Jiwjirao Scindia Vs. Sambhajirao Chandrojirao Angre** reported in 1988 AIR 709.

9. In **Bakulabai Vs. Gangaram** reported in (1998) 1 SCC 537, Hon'ble the Supreme Court has held that:

"7. The other findings of the Magistrate on the disputed question of fact were recorded after a full consideration of the evidence and should have been left undisturbed in revision. No error of law appears to have been discovered in his judgment and so the revisional courts were not justified in making a reassessment of the evidence and substitute their own views for those of the Magistrate"

Sessions Court also observed that the said dispute between the parties is of payment of consultancy fee. The dispute is purely based on contract and MoU (Memorandum of Understanding) which can be decided by the Civil Court only.

The revisional court opined that the allegation as to the extension of threats seems to be only ornamental giving colour to the allegations of the complaint. Reliance has also been placed on the note of caution issued by Hon'ble the Supreme Court that the sub-ordinate courts must ensure that criminal prosecution is not used as an instrument of harassment or for seeking private mandate with an ulterior motive to pressurize the accused. The revisional court found that bare statement regarding the extension of threat is on record, court should see whether the allegations regarding extension of threats are supported with any cogent evidence. When the notice was given by revisionist to opposite party Nos. 2 to 4, the extension of threats did not find any place in that notice and no date or time of the incident is revealed. Witness Saklain Nakvi did not support the version of complaint, hence, Sessions Court itself found that Trial Court did not consider the ingredients of Section 506 while summoning the accused in the above mentioned Section. The revisionist raised the plea during the revision in this Court without availing the opportunity in the first revisional court that learned CJM has no jurisdiction to convert his application moved under Section 156(3) Cr.P.C. into complaint. Now, it is well settled principle that court has ample opportunity to pass appropriate order on the application moved under Section 156(3) Cr.P.C.

10. It is clear from the judgment of the Supreme Court in the case **Suresh Chandra Jain v. State of Madhya Pradesh and Anr. 2001 (42) A.C.C. 459**, that a Magistrate has the authority to treat an application under Section 156(3) Cr.P.C. as a complaint. This will become clear from the reference in the said report to the case of **Gopal Das Sindhi and Ors. v. State of Assam and Anr. A.I.R. 1961 S.C. 986**, in which the following observations were made:

"If the Magistrate had not taken cognizance of the offence on the complaint filed before him, he was not obliged to examine the complainant on oath and the witnesses present at the time of filing of the complaint We cannot read the provisions of Section 190 to mean that once a complaint is filed, a Magistrate is bound to take cognizance if we facts stated in the complaint disclose the commission of any offence. We are unable to construe the word 'may' in Section 190 to mean 'must'. The reason is obvious. A complaint disclosing cognizable

offences may well justify a Magistrate in sending the complaint, under Section 156(3) to the police for investigation. There is no reason why the time of the Magistrate should be wasted when primarily the duty to investigate in cases involving cognizable offences is with the police. On the other hand, there may be occasions when the Magistrate may exercise his discretion and 'Take' cognizance of a cognizable offence."

11. In the case of **Chandrika Singh v. State of U.P. and Ors. 2007 (58) ACC 777**, this Court has held that a Magistrate can treat an application under Section 156(3) Cr.P.C. as a complaint. The Hon'ble Judge referred to various cases in his judgment and has come to this conclusion thereafter. It was observed as follows: *"In view of this judgment of Full Bench, the Magistrate is fully competent to pass an order to register a case and investigate on an application under Section 156(3) Cr.P.C., all the application under Section 156(3) Cr.P.C. may be treated as complaint and in the circumstance, the Magistrate shall follow the procedure as provided in Chapter XV Cr.P.C. This judgment of Full Bench has not been set aside. Hence, in view of the Apex Court and Full Bench of this Court the Magistrate is fully competent to treat an application under Section 156(3)Cr.P.C as a complaint and in the present case the Magistrate passed an order in the circumstances of the case that it may be registered as a complaint case and proceed to record the statement under Sections 200 and 202 Cr.P.C. There appears no illegality and impropriety in the order of the Magistrate."*

12. This Court in the case of **Sukhwasi Vs. State of U.P. 2007 (59) SCC 739 (Allahabad)** has held as follows:

"..... in view of the aforesaid discussion on the legal provisions and decisions of the Supreme Court as on date, it is hereby held that on receiving a complaint, the Magistrate has to apply his mind to the allegations in the complaint upon which he may not at once proceed to take cognizance and may order it to go to the police station for being registered and investigated. The Magistrate's order must indicate application of mind. If the Magistrate takes cognizance, he proceeds to follow the procedure provided in Chapter-XV of Cr.P.C....."

7. It will also be noticed that the law was, and has always been, that if a cognizable offence is made out, the Police are bound to register the First

Information Report. In case, the Police do not register the First Information Report, there is provision under Section 154(3) Cr.P.C. to send an application to Superintendent of Police, who shall direct the registration of a First Information Report, if a cognizable offence is disclosed. There was as such, no need for an authority in this regard being given to the Magistrate. That, this has been done and such authority as given to the Magistrate indicates, that this has been done, because the Magistrate will bring to bear upon the matter a judicial and judicious approach, which will by necessarily implication be selective. That gives a clear incling to the intention of the legislature, that the Magistrate may consider the feasibility and propriety, of passing an order of registration of the First Information Report.”

13. The matter may be looked into from another angle, and that is, in Section 154(3) Cr.P.C. where the Superintendent of Police has been given the authority for registration of First Information Report, the word used is 'Shall'. Section 154(3) Cr.P.C. is as hereunder;

154. Information in cognizable cases -

(1)

(2)

(3) Any person aggrieved by a refusal on the part of an officer in charge of a police station to record the information referred to in Sub-section (1) may send the substance of such information, in writing, and by post, to the Superintend of Police concerned who, if satisfied that such information discloses the commission of a cognizable offence shall either Investigate the case himself or direct an investigation to be made, by any police officer subordinate to him, in the manner provided by this Code, and such officer **shall** have all the powers of an officer incharge of the police station in relation to that offence.

14. In Section 156(3) Cr.P.C., the word used is 'May' Section 156(3) Cr.P.C. is as follows;

156. Police officer's power to investigate cognizable case -

(1)

(2)

(3) Any Magistrate empowered under Section 190 **may** order such an

investigation as above-mentioned."

15. Hence, in view of the case law cited above, it is evident that it is the powers of the Magistrate to treat the application under Section 156(3) Cr.P.C. as a complaint and to proceed to record the statement under Section 200 and 202 Cr.P.C. and decide the application in accordance with the provisions of law.

16. In the present case, court has acted in accordance with the powers vested in it by the provisions of Section 156(3) Cr.P.C., the Magistrate acted with the judicious approach to convert the application moved under Section 156(3) into complaint. Moreover, the powers of Magistrate was not challenged when the first appeal was filed by the revisionist against the impugned order dated 27.08.2012, hence, the revision has no force, there is no illegality, irregularity or perversity in the impugned order, hence revision is liable to be dismissed and is accordingly **dismissed**.

17. Let the copy of the order be sent to the court concerned for necessary information and compliance.

(Renu Agarwal,J.)

Order Date :- 2.1.2024
Karan