

Court No. - 11

Case :- CRIMINAL APPEAL No. - 2787 of 2024

Appellant :- Pancham Ram

Respondent :- State Of U.P. Thru. Prin. Secy. Home Deptt. Lko. And 7 Others

Counsel for Appellant :- Santosh Kumar Srivastava

Counsel for Respondent :- G.A.

Hon'ble Abdul Moin,J.

1. Heard learned counsel for the appellant and learned AGA appearing on behalf of the respondents no. 1 to 3.

2. Instant criminal appeal under Section 14-A (1) of the Schedule Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 has been filed challenging the order dated 03.07.2024 passed by the learned Special Judge, SC/ST (P.A) Act, Ambedkar Nagar in Criminal Misc. Case No. 155 of 2024 Inre; Pancham Ram Vs. Sunil Kumar Yadav whereby the application filed by the appellant under Section 156 (3) has been treated to be a complaint case.

3. Argument of the learned counsel for the appellant is that the learned trial Court has patently erred in treating the said application as a complaint case rather it was the duty of the learned trial Court to have directed for lodging of First Information Report against the private respondents herein.

4. In this regard, learned counsel for the appellant has argued on the factual aspects of the matter.

5. On the other hand, learned AGA has referred to the judgment of this Court in the case of **Mohd. Zakir Vs. State of U.P and ors** reported in **AIR OnLine 2021 All 633** wherein this Court after considering the earlier judgment of this Court in the case of **Gulab Chand Upadhyay Vs. State of U.P and Ors** reported in **(2002) SCC Online All 1221** has held that where the order passed by the learned Magistrate shows that it assigns good reasons for treating the application under Section 156 (3) as a complaint case consequently, no interference is to be made with the said order. However, the Court further clarified that when in the course of proceedings as a complaint case, the learned Magistrate finds a fit case for investigation by the police or such other persons as he thinks fit under Section 202 (1) Cr.P.C for the limited purpose of satisfying himself for proceeding against the accused persons for their summoning then he may proceed in accordance with law.

6. For the sake of convenience, the relevant observations of this Court in the case of **Mohd. Zakir (supra)** are reproduced below:-

11. It would also be appropriate to refer to the judgment of this Court in the case of Gulab Chandra Upadhyay Vs. State of U.P and ors 2002 SCC OnLine All 1221 in which this Hon'ble Court has held as under:

"20. In these circumstances, the question arises that when a Magistrate is approached by a complainant with an application praying for a direction to the police under Section 156 (3) to register and investigate an alleged cognizable offence, why should he (A) grant the relief of registration of a case and its investigation by the police under Section 156 (3) Cr.P.C. and when should he (B) treat the application as a complaint and follow the procedure of Chapter XV of Cr.P.C.

21. The scheme of [Cr.P.C.](#) and the prevailing circumstances require that the option to direct the registration of the case and its investigation by the police should be exercised where some investigation is required, which is of a nature that is not possible for the private complainant, and which can only be done by the police under whom statute has conferred the powers essential for investigation, for example (1) where the full details of the accused are not known to the complainant and the same can be determined only as a result of investigation, or (2) where recovery of abducted person or stolen property is required to be made by conducting raids or searches of suspected places or persons, or (3) where for the purpose of launching a successful prosecution of the accused evidence is required to be collected and preserved. To illustrate by example cases may be visualised where for production before Court at the trial (a) sample of blood soaked soil is to be taken and kept sealed for fixing the place of incident; or (b) recovery of case property is to be made and kept sealed; or (c) recovery under [Section 27](#) of the Evidence Act; or (d) preparation of inquest report; or (e) witnesses are not known and have to be found out or discovered through the process of investigation.

22. But where the complainant is in possession of the complete details of all the accused as well as the witnesses who have to be examined and neither recovery is needed nor any such material evidence is required to be collected which can be done only by the police, no "investigation" would normally be required and the procedure of complaint case should be adopted. The facts of the present case given below serve as an example. It must be kept in mind that adding unnecessary cases to the diary of the police would impair their efficiency in respect of cases genuinely requiring investigation. Besides even after taking cognizance and proceeding under Chapter XV the Magistrate can still under [Section 202 \(1\)](#) Cr.P.C. order investigation, even thought of a limited nature (see para 7 of JT (2001) 2 (SC) 81: ((2001) 2 SCC 628: AIR 2001 SC 571)."

12. The order passed by the Magistrate shows that it assigns good reasons for treating the application under [section 156 \(3\)](#) as a Complaint Case. It has been mentioned that there is a private dispute between the parties with respect to the house/land. All the facts are in the knowledge of the applicant and the necessary evidence can be led by her for which any police investigation is not required.

The learned magistrate has also observed that recovery of any goods is not required. The Magistrate has placed reliance on the judgments in the case of Ram Babu Gupta and Ors Vs. State of U.P and Ors reported in (2001) 43 ACC 50 and 'Sukhwasi Vs. State of U.P.', reported in (2007) ACC 59. The order shows application of judicial mind for the course adopted by the Magistrate which is also reflected in the order. The exercise of discretion by the Magistrate is judicious and as per the law laid down in the cases of Ram Dev Food Products (supra) and [Gulab Chandra Upadhyay](#) (supra).

7. The order impugned is seen in the context of law laid down by this Court in the case of **Mohd. Zakir (supra)** it clearly emerges that there is not infirmity in the said order.

8. Keeping in view the aforesaid discussion, no case for interference is made out. Accordingly, the appeal is dismissed.

9. However, in the course of proceedings in the complaint case, in case the learned Magistrate finds a fit case for investigation by the police or such other persons as he thinks fit under Section 202 (1) Cr.P.C for the limited purpose of satisfying himself for proceeding against the accused persons for their summoning, the dismissal of this appeal would not come in the way for exercise of the said power under Section 202 (1) Cr.P.C.

Order Date :- 11.9.2024

Pachhere/-