

Court No. - 14

Case :- CRIMINAL APPEAL No. - 3948 of 2024

Appellant :- Mohit Rawat

Respondent :- State Of U.P. Thru. Prin. Secy. Deptt. Of Home Lko. And 8 Others

Counsel for Appellant :- Uday Pratap Singh, Ram Chandra Dwivedi

Counsel for Respondent :- G.A.

Hon'ble Ajai Kumar Srivastava-I,J.

1. Heard learned counsel for the appellant, learned A.G.A for the State and perused the record.

2. In view of the order proposed to be passed, notice to opposite party nos.2 to 9 is dispensed with.

3. The instant criminal appeal has been filed for setting aside the order dated 25.10.2024 passed in Criminal Misc. Case No.470 of 2024, Police Station Achalganj, District Unnao.

4. Brief facts are that the appellant moved an application under Section 175(3) B.N.S.S. for registration and investigation of the case which was heard and learned Magistrate vide order dated 25.10.2024 treated the same as a complaint.

5. Foremost submission of learned counsel for the appellant is that the impugned order is not sustainable in the law, insofar as the same are against the law laid down by the Hon'ble Apex Court in the case of **Lalita Kumari vs. Government of Uttar Pradesh and another, reported in 2014 (2) SCC 1**. His further submission is that by means of impugned order dated 25.10.2024 the learned trial Court has directed to treat the application filed under Section 175(3) B.N.S.S. as a complaint, which is against the provisions contained in Section 175(3)

B.N.S.S. He, thus, submitted that the only option available to the learned Magistrate was to allow the application filed under Section 175(3) B.N.S.S. with a direction to the Station House Officer concerned for registration of F.I.R. regarding the matter. The impugned order is thus, patently illegal which would cause miscarriage of justice, therefore, the same is liable to be set aside. He has also submitted that it was the duty of learned Magistrate concerned to issue a direction to the police station concerned to get the FIR lodged on the basis of application moved by the appellant under Section 175(3) B.N.S.S. He, thus, prays that the impugned order is illegal, which could not be sustained and deserve to be set aside.

6. Per contra, learned A.G.A. has supported the impugned order and has submitted that the learned trial Court after taking into consideration the entire gamut of the facts and circumstances of the case has rightly treated the the application filed by the appellant under Section 175(3) B.N.S.S. as a complaint. His further submission is that in **Lalita Kumari (supra)** Hon'ble the Apex Court has not referred, discussed and overruled the law laid down by the Division Bench of this Court in **Sukhwasi vs. State of Uttar Pradesh; 2008 Cri LJ 452**. Therefore, the impugned order cannot be termed to be illegal and no miscarriage of justice would be caused by the impugned order.

7. The scope and ambit of law laid down by the Hon'ble Supreme Court in **Lalita Kumari (supra)** can be ascertained from para no.6 of the judgment, which is quoted hereinbelow :

"6) Therefore, the only question before this Constitution Bench relates to the interpretation of

**Section 154 of the Code and
incidentally to consider
Sections 156 and 157 also."**

(Emphasis supplied)

8. In case of **Lalita Kumari (supra)** the controversy revolved around the registration of F.I.R in cognizable cases by the Police Officer. However, it did not dwelve upon scope and ambit of power vested in Magistrate by virtue of provision of Section 175(3) B.N.S.S. and its corresponding Section 156(3) Cr.P.C., which are, for ready reference, quoted hereinbelow :

***"175. Police officer's power to
investigate cognizable case***

(1)

(2)

(3) *Any Magistrate empowered under Section 210 may, after considering the application supported by an affidavit made under sub-section (4) of Section 173, and after making such inquiry as he thinks necessary and submission made in this regard by the police officer, order such an investigation as above-mentioned.*

***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."

9. In **Sukhwasi (supra)** the Division Bench of this Court in paragraph nos.6, 7, 8 & 9 has held as under:

"6. 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 be necessarily implication be selective. That gives a clear

inkling 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.

7. 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 143(3) Cr.P.C. is as hereunder

"154. Information of 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 Superintendent 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."

8. 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.

9. The use of the word 'shall' in Section 154(3) Cr. P.C: and the use of word 'May' in Section 156(3) Cr.P.C. should make the intention of the legislation clear. If the legislature intended to close options for the Magistrate, they could have used the word 'shall' as has been done in Section 154(3) Cr.P.C. Instead, use of the word 'May' is, therefore, very significant, and gives a very clear indication, that the Magistrate has the discretion in the matter, and can, in appropriate cases, refuse to order registration."

(emphasis supplied)

10. It is, thus, abundantly clear that in view of provisions contained in Section 175(3) B.N.S.S., it cannot be said that the Magistrate is bound to order for registration of case and its investigation invariably; rather as discussed above he has been vested with discretionary power for doing so as held by the Division Bench of this Court in **Sukhwasi (supra)**.

11. Now advertng to the second aspect of this case, which

relates to the direction issued by the learned Magistrate to treat the application filed by the appellant under Section 175(3) B.N.S.S. as a complaint, it is pertinent to refer to para no.15 of the judgment rendered by Division Bench of this Court in **Sukhwasi (supra)**, which is quoted herein under:-

"15. It is hardly possible to infer from the aforesaid observations that the Magistrate cannot treat an application under Section 156(3) Cr. P.C. as a 'Complaint'. Even a nebulous or far fetched interpretation will not lead to that inference. The inference drawn by Hon'ble Vinod Prasad, J. is not logical."

12. In a judgment rendered by a coordinate Bench of this Court in **Chandrika Singh v. State of U.P. : (2007) 58 ACC 777** has held that a Magistrate can treat an application under Section 156(3) Cr. P.C. as a complaint.

13. Thus, in view of what has been held by a Division Bench of this Court in **Sukhwasi (supra)** and by a coordinate Bench of this Court in **Chandrika Singh (supra)**, the direction issued by the learned trial Court, while rejecting the application filed by the appellant under Section 175(3) B.N.S.S. to treat such application as a complaint, cannot be said to be illegal.

14. Therefore, in view of the aforesaid overall reasons, this Court does not find any illegality, material irregularity or perversity in the impugned order dated 25.10.2024 whereby the trial Court has treated the appellant's application under 175(3) B.N.S.S. as a complaint case. Therefore, the instant criminal appeal lacks merit.

15. Accordingly, the prayer for setting aside the impugned order dated 25.10.2024 is refused as this Court does not find any illegality, impropriety and incorrectness in the same.

16. It is needless to mention that, after the complainant/appellant gets his statement under Section 223 B.N.S.S. and the statements of his witnesses are recorded under Section 225 B.N.S.S. the learned trial Court shall be at liberty, having regard to the facts of this case, to resort to the provisions contained in Section 225(1) B.N.S.S., whereby the trial Court is undoubtedly vested with the power to send the complaint for investigation to the police in appropriate cases.

17. In view of the aforesaid discussion, the present criminal appeal is finally **disposed of**.

(Ajai Kumar Srivastava-I, J.)

Order Date :- 18.12.2024
A.Dewal