



2025:AHC:180100

HIGH COURT OF JUDICATURE AT ALLAHABAD

CRIMINAL REVISION No. - 373 of 2022

Sita Ram

.....Revisionist(s)

Versus

State Of U.P. And 5 Others

.....Opposite
Party(s)

Counsel for Revisionist(s)	:	R S Dubey, Savita Dubey
Counsel for Opposite Party(s)	:	Akash Deep Srivastava, G.A.

Court No. - 92

HON'BLE CHAWAN PRAKASH, J.

1. Heard learned counsel for the revisionist, Sri Akash Deep Srivastava, learned counsel for opposite party No.2 to 6 as well as learned A.G.A. for the State.
2. The instant revision has been filed for setting aside the judgment and order dated 06.12.2021 passed by learned Chief Judicial Magistrate, Gorakhpur in Crl. Misc. Application No. 3473 of 2021 (Sita Ram Vs. Makhan and others), whereby application under Section 156(3) Cr.P.C. moved on behalf of revisionist has been filed directed to be registered as a complaint case.
3. The brief facts of the case are that the revisionist had filed an application before the learned Magistrate praying for a direction to the police to register an FIR and investigate the matter under Section 156(3) Cr.P.C. It was alleged that opposite party No.2 had executed a sale deed of certain land in favour of the revisionist and thereafter sold the same property again to other persons. Instead of passing a direction for registration of case under Section 156(3) Cr.P.C., the same is registered as a complaint case.
4. Learned counsel for revisionist submits that revisionist purchase land about 20 decimal Arazi No.169 area 40 decimal from opposite party No.2 (Makhan) after execution of sale deed opposite party No.2 resale the said land to opposite party No. 4, 5 and 6. Learned counsel for the revisionist submits that perusal of the application under Section 156(3) Cr.P.C.

demonstrates that prima facie case is made out against the accused-opposite parties and therefore F.I.R. be ordered to be lodged against the accused persons and the matter requires to be investigated by the police, but the learned Magistrate has committed illegality by not directing the police for registration of the case. Learned Magistrate has directed to registered the same as a complaint case. The learned Magistrate has committed illegality in rejecting the application under Section 156(3) Cr.P.C. in an arbitrary manner, and, therefore, the order impugned is liable to be set aside.

5. Learned counsel for opposite party Nos. 2 to 6 submits that there is no evidence of forgery committed by the opposite party No.2. Opposite party No.2 was the recorded owner of the 40 decimal in Arazi No. 169 situated at Mauja Jungle Matadin, Pargana Haweli, District Gorakhpur. The opposite party No.2 sold 20 decimal land out of 40 decimal in favour of Geeta Devi w/o revisionist on 8.4.1994, while the remaining 20 decimal of land he sold to opposite party Nos. 4, 5 and 6 on 1.9.2021. A true copy of the said agreement has been annexed as Annexure No. CA-2 to the counter affidavit. It is further submitted that the dispute is purely civil nature and no ingredient of cheating forgery or criminal conspiracy is made out against the opposite parties. The learned Magistrate has directed the said application to register as a complaint case. The complainant got every opportunity to lead the evidence under Sections 200 and 202 Cr.P.C.

6. On the other hand, learned A.G.A. support the submission of learned counsel for opposite party Nos. 2 to 6 and submits that there is no illegality or perversity in the impugned order, which may call for any interference by this Court, thus the present revision is liable to be dismissed.

7. I have carefully considered the rival submissions of the parties and perused the record.

8. Law regarding jurisdiction under Section 156(3) Cr.P.C. is well settled. Power under Section 156(3) Cr.P.C. has to be exercised by Magistrate judicially on proper grounds and not in a mechanical manner. If

application does not indicate that any evidence is required to be collected and preserved and applicant is familiar with names of accused persons and witnesses then in such a case, no investigation by police is required. Whether the Magistrate is bound to pass an order for registration of the FIR and its investigation by the police on each and every application under section 156 (3) Cr.P.C. containing allegation of commission of a cognizable offence is no more a 'res-integra', as this controversy has been settled by the Division Bench of the Court in the case of **Sukhwasi vs. State of U.P. 2007** (59) ACC 739. In the case of **Smt. Masuman vs. State of U.P. & others 2007** (1) ALJ 221 and some other cases, the single judges of the Court have taken a view that if the application under section 156 (3) Cr.P.C. discloses the commission of a prima-facie cognizable offence, then it is obligatory for the magistrate to direct investigation after registration of the FIR on the basis of that application. Disagreeing with this view, the following question was referred to the larger Bench for decision in the case of Sukhwasi vs. State of U.P. (supra)

"Whether the Magistrate is bound to pass an order on each and every application under section 156(3)Cr.P.C. containing allegations of commission of a cognizable offence for registration of the FIR 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"?

9. After having considered the full Bench decision of the Court in the case of **Ram Babu Gupta & others vs. State of U.P. 2001** (43) ACC 50 and many other cases, the Division Bench in the case of **Sukhwasi vs. State of U.P.** has answered the question as under:-

"The reference is, therefore, answered in the manner that it is not incumbent upon a Magistrate to allow an application under section 156(3) Cr.P.C. 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) Cr.P.C. as a complaint."

10. Thus, it is apparent that Magistrate is not bound to pass order of investigation by police, even if such application discloses cognizable

offence. The Magistrate is required to apply its mind to find out whether the first information sought to be lodged by the applicant had any substance or not. If the allegations made in the application under section 156(3) Cr.P.C. prima-facie appear to be without any substance, then in such case the Magistrate can refuse to direct registration of the FIR and its investigation by the police, even if the application contains the allegations of commission of a cognizable offence. In such case, the Magistrate is fully competent to reject the application. Even in the cases, where prima facie cognizable offence is disclosed from the averments made in the application under section 156 (3) Cr.P.C. in appropriate case according to facts and nature of the offences alleged to have been committed, the Magistrate can decline to direct investigation and in such cases the application under section 156(3) Cr.P.C. can be treated as complaint, as held by the Division Bench in the case of **Sukhwasi vs. State of U.P. (supra)**.

11. In the present case revisionist has filed an application under Section 156 (3) Cr.P.C. before learned Magistrate seeking a direction for registration of case against the opposite party Nos. 2 to 6 stating revisionist purchase land about 20 decimal Arazi No.169 area 40 decimal from opposite party No.2 (Makhan) after execution of sale deed opposite party No.2 resale the said land to opposite party No. 4, 5 and 6. Perusal of the impugned order clearly states that the learned Magistrate is of the opinion that the name of accused persons is known to the revisionist and revisionist also know to each and every facts of the said incident. The revisionist will get every opportunity to examine himself under Section 200 Cr.P.C. and also to produce its witnesses under Section 202 Cr.P.C. It is evident that dispute is regarding sale agreement of land, which is of purely civil in nature and not criminal. Thus, there is no illegality, perversity or impropriety in the order impugned and the same has rightly been passed by the court concerned after considering the entire material available on record. Moreover, the revisionist has failed to show any illegality or perversity in the order impugned dated 6.12.2021, as such, no case is made out for interference.

12. Considering the material facts, it cannot be said that impugned order is suffering from any such illegality, perversity or any other material

irregularity. The present revision lacks merit and accordingly, it is **dismissed.**

(Chawan Prakash,J.)

October 8, 2025

Md Faisal