



2025:AHC:178873

HIGH COURT OF JUDICATURE AT ALLAHABAD

CRIMINAL REVISION No. - 1365 of 2023

Smt. Sitara Begum

.....Revisionist(s)

Versus

State Of U.P. And 2 Others

.....Opposite Party(s)

Counsel for Revisionist(s)	:	Muhammad Azam, Sushil Kumar, Yakub Ali
Counsel for Opposite Party(s)	:	Ajay Sengar, G.A.

Court No. - 92

HON'BLE CHAWAN PRAKASH, J.

Heard Sri Yakub Ali, learned counsel for the revisionist, learned Addl. Government Advocate for the State and SriAjay Sengar, learned counsel for the Opposite Party Nos. 2 and 3.

Present revision has been filed against the judgment and order dated 27.1.2023 passed by the Additional Sessions Judge/ Special Judge, (D.A.A.) Jalaun at Orai in Criminal Misc. Case No. 150 of 2022 (Smt. Sitara Begum Vs. Narendra Vishwakarma and others) under Section 156 (3) Cr.P.C., Police Station Konch, District Jalaun.

Brief facts of the case is that on 23.9.2022 at about 7.20 hours, son of revisionist was contesting the election and was busy in convesing where Sagar Mehra was standing near the house of revisionist then Narendra Vishwakarma, Santosh Vishwakarma and their other friends have forcibly enticed the son of the revisionist and beaten her son with iron rod and danda and also looted his three golden rings, chain and other gold argicles. The offence committed by the Opposite Party Nos. 2 and 3 was recorded in CCTV footage. Regarding this incident, when revisionist approached to the Police Station Konch, District Jalaun, for lodging the first information report, the Station House Officer, Police Station Konch refused to lodge the first information report of the revisionist. Thereafter, revisionist filed application under Section 156 (3) Cr.P.C. in the Court of Special Judge (D.A.A.) Jalaun at Orai on 4.10.2022. The learned court below rejected the application of the revisionist filed under Section 156 (3) Cr.P.C. vide judgment and order dated 27.1.2023. It is submitted here that contrary to it, Opposite Party No. 2 lodged a first information report in Case Crime No. 203 of 2022, under Sections 387, 452, 323, 504 and 506 IPC Police Station Konch District Jalaun on 24.9.2022.

Learned Counsel for the revisionist has submitted that the Additional Sessions Judge/ Special Judge, (D.A.A.) Jalaun at Orai wrongly and illegally vide order dated

27.1.2023 rejected the application of the revisionist. The order impugned dated 27.1.2023 has been passed without application of mind, whereas cognizable offence is made out.

Learned counsel for the Opposite Party No. 2 has submitted that the order passed by the Additional Sessions Judge/ Special Judge, (D.A.A.) Jalaun at Orai is legal as such there is no illegality in passing the order dated 27.1.2023. On 24.9.2022 first information report was lodged against the son of the revisionist in Case Crime No. 203 of 2022, under Sections 387, 452, 323, 504 and 506 IPC Police Station Konch District Jalaun. Thereafter, on 4.10.2022 revisionist filed application under Section 156 (3) Cr.P.C. and learned Court below after considering the materials on record rejected the application of the revisionist.

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"?

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."

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).

Keeping in view the legal position and in view of the facts and circumstances of the present case, and also considering nature of allegations made in the application under Section 156(3) Cr.P.C., rejection of application under Section 156(3) Cr.P.C by learned trial court vide impugned order dated 27.1.2023, cannot be said against the provisions of law or suffering from any perversity or illegality.

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**.

October 8, 2025

n.u.

(Chawan Prakash,J.)