

Court No. - 73

Case :- APPLICATION U/S 482 No. - 26411 of 2024

Applicant :- Lal Ji Prajapati

Opposite Party :- State of U.P. and Another

Counsel for Applicant :- Ashutosh Kumar Nishad, Bhriguram Ji

Counsel for Opposite Party :- G.A.

Hon'ble Raj Beer Singh, J.

1. Heard learned counsel for the applicant and learned A.G.A. for the State.
2. This application under Section 482 Cr.P.C. has been preferred against the order dated 25.07.2023, passed by learned Chief Judicial Magistrate, Azamgarh, in Complaint Case No.247 of 2023 (Lal Ji Prajapati Vs. Ramvrichh Jaiswal), Police Station- Kotwali, District- Azamgarh, whereby the application filed by the applicant under Section 156(3) Cr.P.C. has been registered as a complaint case. The order dated 08.07.2024, passed by learned Additional Sessions Judge, Court No.5/Special Judge (Gangster Act), Azamgarh in Criminal Revision No.1000303 of 2023, is also being impugned, whereby the revision filed against order dated 25.07.2023 was dismissed.
3. It has been submitted by learned counsel for the applicant that both the impugned orders are against facts and law and thus liable to be set aside. The applicant has filed application under Section 156(3) Cr.P.C. alleging that the opposite party no.2 has agreed to sell 1/4th share of his residential property to the applicant and consequently the applicant has transferred an amount of Rs.5 lakhs into bank account of opposite party no.2 but after that he refused to execute the sale-deed and threatened him. It was submitted that a prima-facie cognizable offence is made out and the learned Magistrate committed error by not making direction to the police to investigate the matter. Similarly, the revisional court has also not considered facts and law in correct perspective and committed error by rejecting the revision. In support of his contentions, learned counsel has placed reliance upon case of **Anmol**

Singh Vs. State of U.P. and Ors. 2021 (2) JIC 210 (ALL).

4. Learned A.G.A. has opposed the application and submitted that there is no material illegality or perversity in the impugned orders.

5. I have considered the rival submissions and perused the record.

6. At the outset it may be mentioned that by impugned order dated 25.07.2023 the application under Section 156(3) Cr.P.C. filed by applicant was registered as a complaint and thereafter, the applicant has preferred a criminal revision against aforesaid order dated 25.07.2023, which has been dismissed by learned Additional Sessions Judge, Court No.5/Special Judge (Gangster Act), Azamgarh vide impugned order dated 08.07.2024. It is correct that availing of the remedy of the revision before the Sessions Judge under Section 399 CrPC does not bar a person from invoking the power of the High Court under Section 482 but it is equally true that the High Court should not act as a second Revisional Court under the garb of exercising inherent powers. While exercising its inherent powers in such a matter it must be conscious of the fact that the Sessions Judge has declined to exercise his revisory power in the matter.

7. In **Deepti alias Arati Rai v. Akhil Rai & Ors**, (1995) 5 SCC 751, the Apex Court held that second revision application, after dismissal of the first one by sessions court is not maintainable and that inherent power under Section 482 of the Code cannot be utilized for exercising powers which are expressly barred by the Code. In case of **Laxmi Bai Patel Vs. Shyam Kumar Patel**; 2002 0 Supreme (SC) 283, the Court held:

"3. Before taking up the merits of the case, it would be proper to consider the exercise of jurisdiction under Section 482 Cr.P.C. of the High Court in the facts and circumstances of the case. In a case where the sessions court exercising revisional power under Section 397(3) Cr.P.C. has dismissed the revision petition by the aggrieved party, a second revision petition about acceptance of the same party is barred. The position is well- settled that in such a case power under Section 482 Cr.P.C. can be exercised by the High Court in rare cases and in exceptional circumstances where the court finds that permitting the impugned order to remain undisturbed will amount to abuse of process of the court and will result in failure of justice."

8. Similarly, in the case of **Dharampal & Ors. v. Ramshri**; 1993 (1) SCC 435, the Hon'ble Supreme Court held that-

" Section 397(3) bars a second revision application by the same party. It is now well-settled that the inherent powers under Section 482 of the Code cannot be

9. In the case of **Rajathi Vs. C.Ganesan**; 1999 SCC (Cri) 1118, the Court held as follows:-

"In Krishnan v. Krishnaveni(1997 (4) SCC 241 : 1997 SCC (Cri) 544), this Court explained the scope and power of the High Court under Section 482 of the Code. The question before the Court was if in view of the bar of second revision under sub-section (3) of Section 397 of the Code was prohibited, whether inherent power of the High Court is still available under Section 482 of the Code. Ordinarily, when revision has been barred by Section 397(3) of the Code, a person - accused/complainant - cannot be allowed to take recourse to the revision to the High Court under Section 397(1) or under inherent powers of the High Court under Section 482 of the Code since it may amount to circumvention of the provisions of Section 397(3) or Section 397(2) of the Code. It is seen that the High Court has suo motu power under Section 401 and continuous supervisory jurisdiction under Section 483 of the Code. So, when the High Court on examination of the record finds that there is grave miscarriage of justice or abuse of the process of the courts or the required statutory procedure has not been complied with or there is failure of justice or order passed or sentence imposed by the Magistrate requires correction, it is but the duty of the High Court to have it corrected at the inception lest grave miscarriage of justice would ensue. It is, therefore, to meet the ends of justice or to prevent abuse of the process that the High Court is preserved with inherent power and would be justified, under such circumstances, to exercise the inherent power and in an appropriate case even revisional power under Section 397(1) read with Section 401 of the Code. As stated earlier, it may be exercised sparingly so as to avoid needless multiplicity of procedure, unnecessary delay in trial and protraction of proceedings."

10. Thus, it is clear that availing of remedy of revision before Sessions Judge under section 399 Cr.P.C. does not bar a person from invoking power of High Court under Section 482 Cr.P.C. but High Court should not act as a second Revisional Court under garb of exercising inherent powers. While exercising inherent powers in such a matter, the High Court can interfere only where it is satisfied that if complaint is allowed to be proceeded with, it would amount to abuse of the process of Court or that interest of justice otherwise call for quashing of the charges. When High Court on examination of record finds that there is grave miscarriage of justice or abuse of process of the Court or the required statutory procedure has not been followed with or there is failure of justice, it is the duty of High Court to have corrected it at the inception lest grave miscarriage of justice would ensue. It is therefore to meet the ends of justice or to prevent abuse of process that High Court is preserved with inherent powers and would be justified under such circumstance to exercise inherent powers. While exercising its inherent powers in such a matter it must be conscious of the fact that the Sessions Judge has declined to exercise his revisory power in the matter. Section 482 Cr.P.C. saves the inherent power of the High Court to make such orders as may be necessary to prevent abuse of the process of any Court or otherwise to secure the ends of justice and it has to be exercised sparingly and with circumspection.

11. In case of **Anmol Singh (supra)**, the co-ordinate Bench of this Court has held as under:-

"14. It is true that every application under Section 156(3) Cr.P.C. disclosing commission of a cognizable offence may not be directed for investigation by police and the Magistrate has jurisdiction to treat the same as a complaint case but in exercise of such jurisdiction the Magistrate has to keep in view various factors as laid down in Lalaram (supra), which are only illustrative and not exhaustive. The exercise of jurisdiction is basically guided by interest of justice, from case to case.

15. Perusal of the order clearly shows that the Magistrate has not applied judicious mind to the facts of the case and in particular paragraph no.3 of the application, which not only made out commission of a cognizable offence but an offence of molestation and sexual assault on the mother of the applicant. The application clearly stated that the accused persons are related to influential persons and as such neither the FIR was being lodged nor the medical of the applicant's mother was carried out. In such matters the medical examination of the victim is necessary. The medical report of the victim is of importance. Merely because the facts are in the knowledge of the applicant, direction to lodge FIR cannot be refused. The gravity/seriousness of the offence; the requirement of the evidence for the purpose of launching a successful prosecution, and basically the interest of justice depending on the facts of each case, need be considered in passing the order under Section 156(3) Cr.P.C. The offence, as per the contents of the application is not a matrimonial, commercial or family dispute, etc. The order does not assign any valid reason nor reflects application of judicious mind to relevant considerations and does not stand the test of the law as laid down in the cases of "Ram Deo Food Products' (Supra) and 'Gulab Chand Upadhyay' (Supra)."

12. The issue 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 '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. After considering 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. (supra)** has answered the question referred to it, in paragraph 23 of the judgment 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."

13. 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 applicant had any substance or not. 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.

14. In case **Mrs. Priyanka Srivastava and another vs. State of U.P. and others**; 2015 AIR(SC)1758, the Hon'ble Apex Court held as under:

"At this stage it is seemly to state that power under Section 156(3) warrants application of judicial mind. A court of law is involved. It is not the police taking steps at the stage of Section 154 of the code. A litigant at his own whim cannot invoke the authority of the Magistrate. A principled and really grieved citizen with clean hands

15. Thus, while dealing with application under Section 156(3) Cr.P.C., 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)**.

16. In the instant matter, the applicant made an application under Section 156(3) Cr.P.C., alleging that the opposite party no.2 has agreed to sell his property to the applicant and consequently applicant has transferred Rs.5 lakhs into account of opposite party no.2 but after that he did not execute the sale-deed. In view of aforesaid legal position, it is clear that in appropriate cases, the Magistrate can register an application under Section 156(3) Cr.P.C. as a complaint case even if there are allegations of cognizable offence. As stated above, the revision against order dated 25.07.2023 has already been dismissed by Session Court, thus in such situation the interference under Section 482 Cr.P.C. can only be made in case when there is grave miscarriage of justice or abuse of the process of the courts or the required statutory procedure has not been complied with or there is failure of justice. Applying the principles set out in the judgments referred above to the case on hand, this Court is of the view that there is no compelling circumstance or exceptional circumstance warranting invocation of section 482 Cr.P.C. by this

Court. Therefore, this application under section 482 Cr.P.C. deserves to be dismissed.

17. The application u/s 482 Cr.P.C. is hereby **dismissed**.

Order Date :- 10.1.2025

SP/-