

IN THE HIGH COURT OF JUDICATURE AT ALLAHABAD

(Sl. No.11)

Court No. - 78

Case :- APPLICATION U/S 482 No. - 41824 of 2024

Applicant :- Jai Shanker Singh

Opposite Party :- State Of U.P. And 7 Others

Counsel for Applicant :- Hanuman Prasad Dube, Vipul Dube

Counsel for Opposite Party :- G.A.

Hon'ble Anish Kumar Gupta,J.

1. Heard Sri Vipul Dube, learned counsel for the applicant and Sri S.K. Ojha, learned AGA-I for the State.
2. The instant application under Section 482 Cr.P.C. has been filed seeking quashing of the order dated 17.09.2024 and the entire proceeding of Misc. Cae No. 1228 of 2024 (Jai Shanker Singh vs. Smt. Minni and others), under Section 156(3) Cr.P.C. as well as the Complaint Case No. 38501 of 2024 (Jai Shanker Singh vs. Smt. Minni and others), pending before the court of Additional Chief Judicial Magistrate, Court No.7, Varanasi.
3. Learned counsel for the applicant submits that the applicant herein had purchased the plot no. 6/3 Mauja Bharatpur, Pargana- Shivpur, Tehsil Sadar, District Varanasi, area 1800 sq. ft. (200 square yards) by way of a sale deed dated 01.05.2019 from one Asha Devi. After the execution of the sale deed and registration thereof, the mutation in the revenue record was also done by the applicant herein. When the applicant herein started construction on the plot, then he came to know that the opposite parties are objecting to the same and trying to occupy the said land and they had also shown a forged and fabricated sale deed in their favour. Having come to know about the aforesaid fact, the applicant herein had inspected the record before the Sub-Registrar and came to know that the accused persons got registered a sale deed dated 03.03.2023 in their favour and

showing the boundaries of the land of the applicant as their boundaries and they want to occupy the said land. Having come to know about the said conspiracy of the opposite parties, the applicant herein approached the Police Commissioner, Varanasi and thereupon filed an application under Section 156(3) Cr.P.C. The trial court vide impugned order dated 17.09.2024 having found that the instant case is related to a property dispute between the parties and all the facts of the case are well within the knowledge of the complainant, therefore, no further investigation or recovery of any incriminating material, is required in the instant case. In view thereof relying upon the judgment of this Court in **Sukhwasi vs. State of U.P., 2007 (59) ACC 739**, the learned court has directed the said application under Section 156(3) Cr.P.C. to be treated as a complaint case. Thereafter the instant application under Section 482 Cr.P.C. has been filed by the applicant herein.

4. Learned counsel for the applicant relying upon the judgments dated 02.09.2024 passed by the Co-ordinate Bench of this Court in Criminal Misc. Application under Section 482 No. 24716 of 2024 (Mukesh Kharwar vs. State of U.P. and 3 others), submits that merely because the facts are within the knowledge of the applicant, the direction to lodge the FIR cannot be refused. Therefore, learned counsel for the applicant seeks a direction to set aside the impugned order dated 17.09.2024 passed by the Additional Chief Judicial Magistrate, Court No.7, Varanasi.

5. Per contra, learned AGA submits that the Division Bench of this Court in Sukhwasi vs. State of U.P. (supra) has categorically laid down the guidelines in principles to be applied while entertaining the applications under Section 156(3) Cr.P.C. and also while refusing the the registration of an FIR and treating the said application as complaint case. The following observations were made by the Division Bench of this Court in Sukhwasi vs. State of U.P. (supra):

"Applications under Section 156(3) Cr. P.C. are now coming in torrents. Provisions under Section 156(3) Cr.P.C. should be used sparingly. They should not be used unless there is something unusual and extra ordinary like miscarriage of justice , which warrants a direction to the Police to register a case. Such applications should not be allowed because the law provides them with an alternative remedy of filing a complaint, therefore, recourse should not normally be permitted for availing the

provisions of Section 156(3) Cr.P.C.

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."

6. Therefore, learned AGA further submits that since the entire facts of the case are in the knowledge of the complainant and no further investigation by the police is required in the instant case to disclose or recover anything. In view thereof, the trial court has rightly directed the application under Section 156(3) Cr.P.C. to be treated as a complaint case. Therefore, there is no illegality in the order passed by the learned Magistrate and the instant application is liable to be dismissed.

7. Having heard the rival submissions made by learned counsel for the parties, this Court has gone through the record of the case. From the record of the case, it is apparent that the allegations as made in the application under Section 156(3) Cr.P.C. are with regard to the subsequent execution of the sale deed in their favour by the opposite parties, for which previous sale deed has also been executed in favour of the applicant and his name was mutated in the records. Primarily a dispute between the parties is of a civil nature. Though that may lead to some criminal offence as well. In the judgment relied upon by the applicant, the following has been concluded by the Co-ordinate Bench of this Court while dealing with the application under Section 156 (3) Cr.P.C. :

"19. Perusal of the impugned order shows that no sufficient reason has been disclosed, on the basis of which, the Magistrate has proceeded to treat the application under section 156(3) Cr.P.C. as a complaint. 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."

8. From the aforesaid observations made by Co-ordinate Bench of this Court as well as the Division Bench in Sukhwasi vs. State of U.P. (supra) as quoted herein above, in application under Section 156(3), it is not mandatory to direct for registration of the FIR, it will depend upon the facts of each case warranting the

registration of the FIR. If the facts are well within the knowledge of the complainant and no disclosure or recovery or investigation is required in the matter. Registration of FIR may not be required in each and every case.

9. In **Lala Ram vs. State of U.P. and 13 others, AHC (119) 365**, this Court has enumerated all the conditions when on an application under Section 156(3) Cr.P.C., a direction for registration of FIR is mandatory. In *Lala Ram vs. State of U.P. (supra)*, following observations have been made:

"(40.08) However, 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 officer upon whom statute has conferred the powers essential for investigation, the option to direct the registration of the FIR and its investigation by the police officer should be exercised, for example:-

(i) 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

(ii) where recovery of abducted person or stolen property is required to be made by conducting raids or searches of suspected places or persons, or

(iii) where for the purpose of launching a successful prosecution of the accused evidence is required to be collected and preserved, and to illustrate this, by few 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."

10. From the perusal of the aforesaid observations, it is only in the circumstances when the full details of the accused all witnesses are not known to the complainant and the same is required to be discovered only by investigation or where the recovery of abducted or stolen property is required to be made by raids or searches of suspected places or persons or where any material is required to be collected and preserved. Only on such circumstances, the registration of FIR is mandatory. When all the facts of the case details of the accused and the witnesses is fully known to the complainant and nothing is required to be discovered or recovered by the the investigation nor any recovery of incriminating articles is required, in such

circumstances, registration of FIR on an Application under Section 156(3) Cr.P.C. cannot be held to be mandatory.

11. In view of the aforesaid, this Court does not find any illegality in the impugned order dated 17.09.2024 passed by the learned Magistrate.

12. Accordingly, the instant application under Section 482 is **dismissed**.

Order Date :- 8.7.2025

Ashish Pd.

(Anish Kumar Gupta,J.)