

Allahabad High Court

Smt. Neeb Devi vs State Of U.P & Others on 12 January, 2010

Court No. - 27

Case :- APPLICATION U/S 482 No. - 33205 of 2009

Petitioner :- Smt. Neeb Devi

Respondent :- State Of U.P & Others

Petitioner Counsel :- Mukesh Chandra Gupta

Respondent Counsel :- Govt. Advocate

Hon'ble Rajesh Chandra,J.

This application under Section 482 Cr.PC. has been filed with a prayer that the order dated 26.11.2009 passed by the special judge (dacoity affected area), Agra in criminal misc. case no. 96/2009 may be quashed. It has further been prayed that a direction may be issued to the court concerned to pass a fresh order upon the application filed by the applicant under Section 156(3) Cr.PC..

In brief the facts of the case are that on 2.10. 2009 the respondent nos. 3 to 6 caused injuries to the applicant Smt. Neeb Devi. When an attempt was made to lodge the FIR, the same was not registered at the Police station concerned. The applicant's husband then sent a registered letter to the S.S.P. Agra but no action was taken by him also. The applicant then filed an application before the Magistrate under Section 156(3) Cr.PC. with a prayer that the police station concerned may be directed to register the FIR. Along with that application the medical examination report of the applicant was also filed. The court however instead of sending the application for registering the FIR at the police station, treated the application as a complaint. The contention of the applicant is that the order of the Magistrate registering the application as a complaint case is against the law and the same is liable to be dismissed.

I have heard the learned counsel for the applicant as well as the learned A.G.A. appearing for the state.

Learned A.G.A. argued that the court concerned has not committed any illegality or irregularity in passing the impugned order as it is well settled that when an application is moved under Section 156(3) Cr.PC. the Magistrate may send it to the police station for the registration and investigation of the case or the Magistrate may treat it as a complaint case and may proceed under Chapter XV of the Code of Criminal Procedure.

I have considered over the respective arguments. In this reference a Full Bench decision of this High Court in Ram Babu Gupta Vs. State of U.P. 2001(43) ACC 50 may be referred in which the Hon'ble High Court held as under:

"Coming to the second question noted above, it is to be at once stated that a provision empowering a Court to act in a particular manner and a provision creating a right for an aggrieved person to approach a Court or authority, must be understood distinctively and should not be mixed up. While

sections 154, 155, Sub-sections (1) and (2) of 156 Cr.P.C. confer right on an aggrieved person to reach the police, 156(3) empowers a Magistrate to act in a particular manner in a given situation. Therefore, it is not possible to hold that where a bare application is moved before Court only praying for exercise of powers under Section 156(3) Cr.P.C. it will remain an application only and would not be in the nature of a complaint. It has been noted above that the Magistrate has to always apply his mind on the allegations in the complaint where he may use his powers under Section 156(3) Cr.P.C. In this connection, it may be immediately added that where in an application, a complaint states facts which constitute cognizable offence but makes a defective prayer, such an application will not cease to be a complaint nor can the Magistrate refuse to treat it as a complaint even though there be no prayer seeking trial of the known or unknown accused. The Magistrate has to deal with such facts as constitute cognizable offence and for all practical purposes even such an application would be a complaint.

Moreover, this court in the case of Yogendra Singh VS. State of UP and another, 2005(51) ACC 890 (All), has held that application filed under Section 156(3) Cr.P.C. can be treated as complaint under Section 200 Cr.P.C. and no separate complaint is required to be filed.

In the case of Joseph Mathuri @ Vishveswaranand and another Vs. Swami Sachchidanand Harishakshi and another, 2001 (Suppl) ACC 957(SC), the application was moved by the complainant under section 156 (3) Cr.P.C. before the Magistrate for directing the police to register the case against the appellant. In that matter Hon'ble Apex Court has held that there was nothing wrong if the application was directed to be treated as complaint."

In the light of the above noted judgments, I am of the view that the learned Magistrate has not committed any illegality or infirmity in passing the impugned order and there is no reason to interfere with the order passed by the Magistrate.

The application is accordingly dismissed.

Order Date :- 12.1.2010 Naresh