

# Indradev Singh vs State Of U.P. And Another on 27 March, 2025

**Author: Raj Beer Singh**

**Bench: Raj Beer Singh**

HIGH COURT OF JUDICATURE AT ALLAHABAD

?Reserved

Neutral Citation No. - 2025:AHC:43975

Court No. - 71

Case :- APPLICATION U/S 482 No. - 21944 of 2024

Applicant :- Indradev Singh

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

Counsel for Applicant :- Dinesh Kumar Singh

Counsel for Opposite Party :- G.A.

Hon'ble Raj Beer Singh,J.

1. Heard Sri Dinesh Kumar Singh, learned counsel for applicant and the learned A.G.A. for the State.
2. This application u/s 482 Cr.P.C. has been preferred against the order dated 29.05.2024 passed by learned Additional District & Sessions Judge, Court No. 13, Varanasi in Criminal Revision No. 179 of 2023 (Indradev Singh Vs. State of U.P. and Others), as well as against the order dated 01.05.2023 passed by learned C.J.M., Varanasi in Misc. Case No. 1083 of 2023 (Indradev Singh Vs. Sandeep Singh and Others), whereby the application under Section 156(3) Cr.P.C. was registered as a complaint case.

3. It is 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., wherein it was alleged that opposite party no. 2 along with three unknown persons has attacked the applicant with a rod and that there were also allegation of robbery of golden chain but despite that the application filed by applicant under Section 156(3) Cr.P.C. has been registered as a complaint case. Learned counsel has referred case of Anmol Singh Vs. State of U.P. and Others 2021 o Supreme (All) 10 and Mukesh Kharwar Vs. State of U.P. and 3 Others (Application U/S 482 No.-24716 of 2024), decided on 02.09.2024, and submitted that in view of allegations made in the application under Section 156(3) Cr.P.C., the investigation by the police was necessary and thus, learned Magistrate committed error by registering the said application under Section 156(3) Cr.P.C. as a complaint case. The revisional Court has also not considered facts and law in correct perspective and dismissed the criminal revision in an arbitrary manner.

4. Learned A.G.A. has opposed the application and submitted that there is no illegality or perversity in the impugned order. It was submitted that it is well settled that learned Magistrate has jurisdiction to register an application under Section 156(3) Cr.P.C. as a complaint case even in the cases where cognizable offence is made out. It was further submitted that revision against the order passed by learned C.J.M. has already been dismissed and in such facts interference under Section 482 Cr.P.C. can only be made in extraordinary jurisdiction.

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

6. At the outset, it may be mentioned that application of applicant filed under Section 156(3) Cr.P.C. was registered as a complaint case by learned Chief Judicial Magistrate, Varanasi vide order dated 01.05.2023 and the prayer of investigation by police was declined. The applicant has preferred a revision against said order dated 01.05.2023, which has been dismissed by the Sessions Court vide order dated 29.05.2024. It is well settled that availing remedy of revision before the Sessions Court under Section 399 Cr.P.C. does not bar a person from invoking powers of High Court under Section 482 Cr.P.C. but in such a matter powers under Section 482 Cr.P.C. can be invoked only when the Court finds that there is grave miscarriage of justice or abuse of process of Court or the required statutory procedure has not been followed. Thus, once revision is dismissed against an order, interference under Section 482 Cr.P.C. can be made only in extraordinary circumstances. In this connection a reference may be made to the case of Deepti alias Arati Rai Vs. Akhil Rai & Ors, (1995) 5 SCC 751, Laxmi Bai Patel Vs. Shyam Kumar Patel; 2002 o Supreme (SC) 283, Dharampal & Ors. Vs. Ramshri; 1993 (1) SCC 435 and Rajathi Vs. C.Ganesan; 1999 SCC (Cri) 1118.

7. So far 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."

8. 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.

9. 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 must have free access to invoke the said power. It protects the citizens but when pervert litigations takes this route to harass their fellows citizens, efforts are to be made to scuttle and curb the same."

10. 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).

11. In case of Anmol Singh (supra), there were allegation of sexual assault on a lady and in para nos. 14 and 15 the Court 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. In case of Mukesh Kharwar (supra) in para nos. 15, 16 and 19, the Court held as under:-

?15. From the above discussion, it is clear that the scheme of Cr.P.C. and the prevailing circumstances require that the option to direct the registration of the case and its investigation by the police should be exercised 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 upon whom statute has conferred the powers essential for investigation, for example (1) 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 (2) where recovery of abducted person or stolen property is required to be made by conducting raids or searches of suspected places or persons, or (3) where for the purpose of launching a successful prosecution of the accused evidence is required to be collected and preserved. To illustrate by 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.

16. Thus, where the complainant is in possession of the complete details of all the accused as well as the witnesses who have to be examined and neither recovery is needed nor any such material evidence is required to be collected which can be done only by the police, no "investigation" would normally be required and the procedure of complaint case should be adopted. It must be kept in

mind that adding unnecessary cases to the diary of the police would impair their efficiency in respect of cases genuinely requiring investigation. Besides even after taking cognizance and proceeding under Chapter XV the Magistrate can still under Section 202(1) Cr. P.C. order investigation, even thought of a limited nature.

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. The impugned order does not assign any valid reason nor reflects application of judicious mind and has been passed in a mechanical manner only on the ground that the facts of the case were within the knowledge of the applicant, thus, the same is liable to be set-aside.?

13. Coming to the facts of the instant case, perusal of record shows that the applicant has filed application under Section 156(3) Cr.P.C. alleging that on 06.04.2023 at about 07:00 PM while he was going from Gola to Varanasi, the opposite party no. 2 Sandeep Singh, along with three unknown persons, has stopped him and they have attacked him with a rod at his head and said Sandeep Singh has snatched his golden chain. The applicant has not mentioned anything as to how the alleged Sandeep Singh is known to him. It appears from the record that on 06.04.2023 said Sandeep Singh has lodged a first information report against applicant and one unknown person for offence under Sections 452, 323, 504, 506 I.P.C., alleging that on 06.04.2023 at about 06:30 PM they trespassed in to his house, hurled abuses and attacked him with a rod and resultantly he sustained injury. It may further be stated that the applicant has alleged that said Sandeep Singh and unknown persons have attacked him by hitting him with a rod at his head but in medical examination report no injury has been shown on head of applicant and only some contusions have been shown at other parts of his body. Learned C.J.M. has registered the application of applicant as a complaint. In view of attending facts and circumstances of the matter, it can not be said that there has been any abuse of the process of Court or by registration of application of applicant as a complaint case there has been any miscarriage of justice. As stated above, in case of Anmol Singh (supra) there were allegation of sexual assault and there was no such fact that any first information report was registered by the opposite party against applicant. Even in case of Anmol Singh (supra) it has been held that every application under Section 156 (3) Cr.P.C. disclosing commission of a cognizable offence may not be directed for investigation by the police and Magistrate has jurisdiction to treat the same as a complaint case. Similarly, the facts of the case of Mukesh Kharwar (supra) are also on different footing. As referred above, in those case laws there was no such version that revision against the order of Magistrate has been dismissed.

14. Considering entire facts, it appears that the case laws relied by learned counsel for the applicant do not provide any help to the applicant in the instant matter. It would be pertinent to mention that the revision against order dated 01.05.2023 has been dismissed by the Sessions Court by considering facts of the matter as well as position of law. No patent illegality or perversity could be shown in the impugned order. As stated above, once revision against the order of Magistrate has

been dismissed, interference under Section 482 Cr.P.C. can be made only in extra-ordinary circumstances like that there is grave miscarriage of justice or abuse of process of Court or failure of justice. In the instant matter, no such case or eventuality is made out.

15. Considering entire facts, no case for invoking powers under Section 482 Cr.P.C. is made out. The application under Section 482 Cr.P.C. lacks merit and thus, liable to be dismissed.

16. The application under Section 482 Cr.P.C. is dismissed.

Order Date :- 27.3.2025 SK Srivastava