

Rakesh Kumar Verma And Ors. vs The State Of U.P And Ors. on 1 May, 2025

HIGH COURT OF JUDICATURE AT ALLAHABAD, LUCKNOW BENCH

HIGH COURT OF JUDICATURE AT ALLAHABAD

(LUCKNOW)

Neutral Citation No. - 2025:AHC-LK0:25252

Court No. - 27

Case :- APPLICATION U/S 482 No. - 2687 of 2015

Applicant :- Rakesh Kumar Verma And Ors.

Opposite Party :- The State Of U.P And Ors.

Counsel for Applicant :- Santosh Kumar Kanaujia

Counsel for Opposite Party :- Govt. Advocate, Kaushlendra Tewari

Hon'ble Ajai Kumar Srivastava-I, J.

1. Heard learned counsel for the applicants and learned A.G.A. for the State.
2. This application under Section 482 Cr.P.C. has been filed praying inter alia following main prayers :-

"A. Quash the order dated 13.05.2015 passed by Additional Chief Judicial Magistrate, Court No.2, Lakhimpur Kheri in Misc. Case No.483 of 2015, Shri Ram and others vs. Rakesh Kumar Verma and others on an application moved on behalf of opposite

party nos.2 to 4, in the interest of justice."

3. The brief facts giving rise to the instant application are that the opposite parties No.2 to 4 moved an application under Section 156(3) Cr.P.C. for getting the case registered and investigate against the present applicants herein, which came to be allowed by means of impugned order dated 13.05.2015 passed by the Additional Chief Judicial Magistrate, Court No.2, Kheri.

4. It has been submitted by learned counsel for the applicants that the impugned order dated 13.05.2015 is patently illegal, which has been passed without application of judicial mind. His further submission is that impugned order is an outcome of suppression of material facts that too deliberately, therefore, the order itself is vitiated because of suppression of material facts by opposite party nos.2 to 4.

5. It is also submitted by learned counsel for the applicants that the impugned order dated 13.05.2015 is an abuse of process of the Court as the procedure prescribed under Section 156 Cr.P.C. has not been followed. Therefore, the impugned order dated 13.05.2015, which has been passed in utter disregard of mandatory statutory provision would cause serious prejudice to the applicants herein, who are innocent.

6. Learned Additional Government Advocates appearing for the State has vehemently opposed the aforesaid submission by submitting that the learned trial Court after taking into consideration the entire gamut of the facts and circumstances of the case has rightly passed the impugned order dated 13.05.2015. Therefore, the impugned order cannot be termed to be illegal and no miscarriage of justice would be caused by the impugned order.

7. Having heard learned counsel appearing for the applicants, learned A.G.A. for the State and upon perusal of the material available on record, the foremost question, which crops up before this Court, is whether the prospective accused against whom a criminal case is yet to be registered, has right to assail the order passed in exercise of powers vested in the learned Magistrate under Section 156(3) Cr.P.C. whether such application is maintainable at the behest of the applicants ?

8. The provisions contained in Section 156(3) Cr.P.C. is quoted herein below :-

"156. Police officer's power to investigate cognizable case.

(1).....

(2).....

(3) Any Magistrate empowered under Section 190 may order such an investigation as above-mentioned."

9. The order passed while disposing of an application moved under Section 156(3) Cr.P.C., which appears in Chapter XII of the Cr.P.C., according to Hon'ble the Supreme Court is passed at a

pre-cognizance stage. In this regard, a judgment rendered by Hon'ble the Supreme Court in M/s SAS Infratech Pvt. Ltd. vs. The State of Telangana and another passed in Criminal Appeal No.2574 of 2024 arising out of Special Leave Petition (Crl.) No.2123 of 2024, on 14.05.2024 may be usefully referred to and paragraph No.8, being relevant, is quoted herein below :-

"In view of the above, it is clear that when the Magistrate in exercise of his judicial discretion directs investigation under Section 156(3) of Cr.P.C., he cannot be said to have taken cognizance of any offence. It is only when the Magistrate after applying his mind prefers to follow the procedure under Chapter XV of Cr.P.C. by resorting to Sections 200, he can be said to have taken cognizance of the offence."

(emphasis supplied)

10. Thus, on the basis of what has been held in M/s SAS Infratech Pvt. Ltd.'s case (supra), there cannot be any doubt about the fact that while passing an order under Section 156(3) Cr.P.C., the Magistrate cannot be said to have taken cognizance of any offence, which is done by the learned Magistrate after applying judicial mind when he prefers to follow the procedure under Chapter XV of the Cr.P.C. by resorting to Section 200 of the Cr.P.C.

11. It is also relevant to refer to a judgment passed by co-ordinate Bench of this Court in Application U/s 482 No.2600 of 2021 titled Dhanesh Chandra Sharma and another vs. State of U.P. and another, decided on 02.02.2021, wherein in para no.10 this Court has held as under :-

"10. It may therefore be reiterated that at the pre-cognizance stage when only a direction has been issued by the Magistrate under Section 156 (3) Cr.P.C. to investigate a prospective accused has no locus standi to challenge a direction for investigation of a cognizable case before cognizance or the issuance of process. It may also be taken note of that the order by the Magistrate directing a police officer to investigate a cognizable case is an incidental step in the aid of investigation and trial and is interlocutory in nature, similar to orders granting bail, calling for records, issuing search warrants, summoning witnesses and other like matters which do not impinge upon a valuable right of a prospective accused and is, hence, not amenable to a challenge in a criminal revision in view of the bar contained under Section 397(2) Cr.P.C."

(Emphasis supplied)

12. Thus, on the basis of whatever has been discussed above, what comes out succinctly is that Hon'ble the Supreme Court in Renu Kumari v. Sanjay Kumar, (2008) 12 SCC 346 has held that in exercising jurisdiction under Section 482 CrPC, the High Court would not ordinarily embark upon an enquiry whether the evidence in question is reliable or not or whether on a reasonable appreciation of it accusation would not be sustained. It is also no more res integra that inherent powers under Section 482 Cr.P.C. cannot be used to stifle prosecution at inception even before material and evidence is collected. It is also noteworthy that under Section 482 Cr.P.C. a party gets

no vested or inherent right to seek interference. In exercise of that jurisdiction the High Court steps in only to meet the contingencies catalogued in Section 482 Cr.P.C. itself.

13. The impugned order has come to be passed by learned trial court thereby directing the concerned police station to register a case and investigate the same on the basis of allegation and material placed before the learned trial court. Therefore, till any case is registered pursuant to aforesaid order, the status of the present applicants is nothing more than that of a prospective accused only, against whom, even a first information report is yet to be lodged.

14. Hon'ble the Supreme Court in *HDFC Securities Ltd. and others vs. State of Maharashtra* and another reported in (2017) 1 SCC 640, in paragraph No.27 has held as under :-

"27. It appears to us that the appellants approached the High Court even before the stage of issuance of process. In particular, the appellants challenged the order dated 4-1-2011 passed by the learned Magistrate under Section 156(3) CrPC. The learned counsel appearing on behalf of the appellants after summarising their arguments in the matter have emphasised also in the context of the fundamental rights of the appellants under the Constitution, that the order impugned has caused grave inequities to the appellants. In the circumstances, it was submitted that the order is illegal and is an abuse of the process of law. However, it appears to us that this order under Section 156(3) CrPC requiring investigation by the police, cannot be said to have caused an injury of irreparable nature which, at this stage, requires quashing of the investigation. We must keep in our mind that the stage of cognizance would arise only after the investigation report is filed before the Magistrate. Therefore, in our opinion, at this stage the High Court has correctly assessed the facts and the law in this situation and held that filing of the petitions under Article 227 of the Constitution of India or under Section 482 CrPC, at this stage are nothing but premature. Further, in our opinion, the High Court correctly came to the conclusion that the inherent powers of the Court under Section 482 CrPC should be sparingly used."

(emphasis supplied)

15. At the stage of passing an order under Section 156(3) Cr.P.C., it cannot be said that by means of impugned order dated 13.05.2015 the learned trial court proceeded to take cognizance of the matter, therefore, right of hearing, if any, as envisaged under Sections 200 and 202 Cr.P.C., which are placed under Chapter XV of Cr.P.C. was not available to the present applicants at the stage of passing any order under Section 156(3) Cr.P.C. by the Magistrate.

16. Besides, the applicants have remedy of seeking anticipatory bail. The statutory remedy of seeking regular bail or seeking relief for quashing of order taking cognizance and entire proceeding may also be sought by any applicant, if he is so advised.

17. Therefore, in view of the availability of aforesaid constitutional as well as legal remedies, it cannot be said that the impugned order has rendered the applicants as remediless.

18. Thus, the upshot of the aforesaid overall discussion is that the impugned order dated 13.05.2015, passed by the learned Magistrate under Section 156(3) Cr.P.C., has been passed at precognizance stage.

19. Therefore, in view of the aforesaid overall discussions, the present application, in the considered opinion of this Court, is nothing but a pre-mature exercise on the part of the applicants, which being devoid of merits deserves to be dismissed and is accordingly, dismissed.

(Ajai Kumar Srivastava-I, J.) Order Date :- 01.05.2025 A.Dewal