

Chandrapal Vs. State of U.P. and ors.

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Court : Allahabad

Decided On : Feb-12-2009

Reported in : 2009CriLJ3174

Judge : Arvind K. Tripathi, J.

Appellant : Chandrapal

Respondent : State of U.P. and ors.

Disposition : Petition dismissed

Judgement :

ORDER

Arvind K. Tripathi, J.

1. Heard learned Counsel for the revisionist, counsel for the opposite party and perused the record.
2. The present criminal revision has been filed against the order dated 31-1-2009 passed by Chief Judicial Magistrate, Aligarh in Criminal Case No. 11/11 of 2009, Chandrapal v. Chokhe Singh and Ors..
3. Counsel for the revisionist submitted that when the first information report was not lodged by the Police then an application under Section 156(3) Cr.P.C. was filed. He further submitted that when the application was moved under Section

156(3) Cr.P.C. the learned Magistrate was required to direct Officer In-Charge of Police Station for registration and investigation of the case. He further submitted that under Section 156(3) Cr.P.C. the provision is that any Magistrate empowered under Section 190 may order such an investigation and the word may has to be read as shall hence the Magistrate was only required to direct for registration of the case. The Magistrate has committed error by considering the fact and evidence at this stage to the effect whether offence was made out or not. Whether offence was made out or not, it was required to be investigated and police would submit the report after collection of evidence. In support of his argument he has relied the judgement of the learned Single Judge of this Court reported in 2007 (57) ACC 508 : 2007 (1) ALJ (NOC) 7, Chandan v. State of U.P. and Anr.. He has relied para 9 of the aforesaid judgement in which the judgement of the Apex Court of Madhu Bala v. Suresh Kumar and Ors. reported in : 1997 (35) ACC 371 SC : AIR 1997 SC 3104 and Central Bureau of Investigation through S.P. Jaipur v. State of Rajasthan and Anr. reported in : 2001 (42) ACC 451 SC : AIR 2001 SC 668 were considered in para 9 of the aforesaid judgment exerted hereinbelow:

In the case of Madhu Bala v. Suresh Kumar and Ors. it has been held by the Supreme Court in para 10 thereof:

The provisions of the Code therefore do not in any way stand in the way of a Magistrate to direct the police to register a case at the police station and then investigate into the same. In our opinion when an order for investigation under Section 156(3) of the Code is to be made the proper direction to the police would be' to register a case at the police station treating the complaint as the first information report and investigate into the same.It has been held by the Apex Court in the case of Central Bureau of Investigation Through S.P. Jaipur v. State of Rajasthan and Anr. as follows:What is contained in Sub-section (3) of Section 156, is the power to order the investigation referred to in Sub-section (1), because the words 'order, such an investigation as above mentioned' in Sub-section (3) are in mistakable clear as referring to the other sub-section. Thus the power is to order an 'officer-in-charge of a police station' to conduct investigation.

4. The judgement of the Apex Court in case of Madhu Bala AIR 1997 SC 3104 was related with the direction by the Magistrate to the police for investigation. According to the Apex Court if the learned Magistrate has directed for the investigation under Section 156(3) Cr.P.C. the Police has to register case on such complaint treating it as FIR. The proper direction to the police would be 'to register a case at the Police Station treating the complaint as the first information report and investigate into the same'. Hence, the aforesaid observation is not in support of the contention of the argument of the counsel for the revisionist. As far as the observation of the Apex Court in case of Central Bureau of Investigation v. State of Rajasthan AIR 2001 SC 668 is concerned, the provision of Sub-section (3) of Section 156 was considered and it was observed by the Apex Court that under Sub-section (3) of Section 156, the power of the Magistrate was to direct for investigation referred to in Sub-section (1) of Section 156 because in Sub-section (3) it has been mentioned that Magistrate may order such an investigation as mentioned in Sub-section (1). It means the Magistrate can direct investigation by Officer-In-Charge of Police Station. However, it cannot be stretched to direct for investigation by C.B.I. It has not been held by the Apex Court or by the High Court that the learned Magistrate was not required to consider the contents of application and merely if the application was moved he was required to direct for registration and investigation of the case without considering the contents of the application/complaint. If Sub-section (3) of Section 156 is considered along with Sub-section (1) of Section 156 Cr.P.C. then it is clear that if cognizable offence is disclosed the learned Magistrate may direct for registration and to investigate into such complaint. Under Sub-section (1) an Officer Incharge of the Police Station is authorized to investigate any cognizable case without order of the Magistrate. Hence, when the application is moved the Magistrate will not work like a postman but he has to examine whether from reading of the application/complaint under Section 156(3) Cr.P.C. prima facie commission of offence is disclosed or not. If he finds that no commission of offence was disclosed, he can reject the application and if he finds that prima facie commission of cognizable offence was disclosed, he will direct for registration and investigation of such complaint. If the Magistrate finds that though prima facie commission of offence was disclosed but it does not require investigation as no recovery or discovery is necessary in that case, then he

may proceed as a complaint case. However, if the learned Magistrate finds that prima facie no commission of offence was disclosed he can reject the application.

5. The brief fact of the case is that in the application there was allegation for transfer of land of Gata No. 460, 465 and 466 for a sum of Rs. 3 lac out of which Rs. 2,70,000/- (two lac seventy thousand) was paid and a receipt was obtained regarding the same from original land holder Smt. Jaimanti Devi wife of Jokhe Singh. There was no registered agreement for transfer of the aforesaid land. It was further stated that in the application subsequently after payment of Rs. 25,000/- the parties agreed that the sale deed would be registered regarding the land in question. In the mean time, Smt. Jaimanti Devi expired thereafter, her son and husband transferred the aforesaid land in favour of the third person on 28-11-2008. He also stated that they came to know on 28-11-2008 then asked to return the receipt after taking back the amount paid to Smt. Jaimanti Devi. From perusal of the aforesaid contents it is clear that to whom there was allegation that the money was paid was not alive and there was no agreement with the son and husband of the late Jaimanti Devi. Unless there was intention to deceive and misappropriate the amount from very beginning it cannot be said that the offence was made out against the aforesaid persons. Even if there was agreement that was with late Smt. Jaimanti Devi but her son and husband were not witnesses of the aforesaid receipt and they might not be aware because there was no registered agreement. If there was payment the revisionist might have availed remedy of filing suit. The dispute is clearly of civil nature. Hence prima facie no offence was disclosed against the husband and son of late Smt. Jaimanti Devi. In view of the aforesaid facts and circumstances, no interference is required under revisional power in the order of the learned Chief Judicial Magistrate, Aligarh rejecting the application filed under Section 156(3) Cr.P.C.

6. Accordingly, present criminal revision is rejected.