

Om Prakash Singh and anr. Vs. State of U.P. and ors.

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Court : Allahabad

Decided On : Mar-25-2004

Reported in : 2004CriLJ3567

Judge : S. Rafat Alam and ;Mukteshwar Prasad, JJ.

Acts : Code of Criminal Procedure (CrPC) , 1974 - Sections 154, 156(3) and 173

Appeal No. : Crl. Misc. Writ Petn. No. 1541 of 2004

Appellant : Om Prakash Singh and anr.

Respondent : State of U.P. and ors.

Advocate for Def. : R.S. Sharma, Adv. and ;A.K. Shukla, A.G.A.

Advocate for Pet/Ap. : R.C. Yadav, Adv.

Disposition : Petition dismissed

Judgement :

1. In the instant petition the petitioners have prayed for quashing of the FIR dated 5-10-2003, registered as case crime No. 153 of 2003, under Section 376 IPC and Section 3(1)(xii) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (hereinafter referred to as 'the Act') at Police Station Rura, District Kanpur Dehat.

2. Heard learned counsel for the petitioners, Shri Ramsheel Sharma, learned counsel for the caveator-respondent No. 4 and the learned AGA and also perused the impugned FIR.

3. It appears that the impugned FIR has been lodged by respondent No. 4, who is a woman belonging to Scheduled Caste, alleging therein that the petitioners went to her house and brought her to police station and from there they took her to the house of one Rajesh Yadav where they forcibly committed rape on her and she was also threatened that if she opens her mouth her brother and father would be confined to jail forever and thus, the allegation prima facie discloses commission of cognizable offence under Section 376 IPC and Section 3(1)(xii) of the Act.

4. Learned counsel for the petitioners, however, submitted that the impugned FIR deserves to be quashed for the reason that respondent No. 4 earlier moved application before the learned Magistrate for directing the police to investigate into the alleged offence but the same was rejected vide order dated 25-9-2003, which was not challenged by her before any higher Court and as such it has become final and, therefore, the impugned FIR cannot sustain. It is submitted that once the Magistrate under Section 156(3) Cr. P. C. rejected the application for registration and investigation of the case, the police cannot register the FIR and proceed for investigation.

5. We do not find any force in the submission. It is well settled legal position that the police has statutory right to investigate into the circumstances of any alleged cognizable offence and this statutory power of investigation cannot be interfered with by the Court unless it is found that the allegation does not disclose commission of cognizable offence or the power of investigation is being exercised by, the police mala fide. The power of the police under Chapter XII of the Cr. P. C. cannot be whittled away even after rejection of the application by the Magistrate for directing the police to investigate the offence. Once the information relating to the commission of cognizable offence is received it is within the province of the police to investigate and submit report under Section 173 Cr. P. C. The Hon'ble Apex Court in the case of *S. N. Sharma v. Bipen Kumar Tiwari and others*, AIR 1970 SC 786 : (1970 Cri LJ 764) held that the power of police to investigate has

been made independent of any control by the Magistrate. Therefore, merely the fact that the application of respondent No. 4 for directing the police to investigate has been rejected by the Magistrate, cannot be a ground for quashing the FIR if it discloses commission of cognizable offence. Learned counsel for the petitioners could not point out any provision in the Cr. P. C. nor cited any authority before us providing that in the event of rejection of application under Section 156(3) Cr. P. C. the police has no authority or jurisdiction to investigate on receipt of information of commission of cognizable offence.

6. Investigation of cognizable offence is primary duty of the police and, therefore, regardless of the order of the Magistrate refusing to exercise his discretion directing the police to investigate any cognizable offence under Section 156(3) Cr. P. C., the police has ample power to investigate into a cognizable offence as soon as the information of commission of cognizable offence is received and thereafter submit report under Section 173(2) Cr. P. C.

7. The next contention of the learned counsel for the petitioners is that the impugned FIR has been lodged mala fide as the police submitted charge sheet against one Shyam Narain in two cases and, at his instance, respondent No. 4 has falsely lodged the impugned FIR. In our view, this submission has also no merit for the reason that it is settled law that heavy onus lies on a person, who alleges mala fide to prove the same by giving cogent evidence. Admittedly, Shyam Narain is different person and has no relation with the informant. No evidence has been brought on record to suggest that Shyam Narain instigated of which it is difficult to hold that the impugned FIR has been lodged at the instance of Shyam Narain and, therefore, it suffers from the vice of malice. No other point has been urged.

8. Admittedly, the investigation is being made by the police and at this stage this Court can only examine the allegations made in the impugned FIR and would not appreciate by way of sifting evidence collected during the investigation. In the case in hand, a bare reading of the FIR discloses commission of cognizable offence and, therefore, it would not be sound exercise of discretion to interfere with the investigation at this stage nor the FIR, having disclosed commission of cognizable offence, can be quashed.

9. The writ petition, therefore, has no merit and is accordingly dismissed. It would, however, be open to the petitioners to apply for bail in case crime No. 153 of 2003, under Section 376 IPC and Section 3(1)(xii) of the SC & ST Act, P. S. Rura, District Kanpur Dehat after surrender before the Court concerned and we have no doubt that the same would be considered on merit and disposed of expeditiously.

10. With the aforesaid observation this petition stands dismissed.

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