

Kartik Vs. State of U.P. and Another

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Court : Allahabad

Decided On : Oct-28-2010

Judge : Shri Kant Tripathi, J.

Appeal No. : CRIMINAL REVISION No. - 3724 of 2010

Appellant : Kali Ram

Respondent : Mistri Udal

Advocate for Def. : Govt. Advocate

Advocate for Pet/Ap. : Gaurav Kakkar, Adv

Judgement :

1. Heard the learned counsel for the revisionist and the learned A.G.A. for the respondent State and perused the record.
2. This is a revision against the order dated 16.8.2010 passed by the Judicial Magistrate/Additional Civil Judge, Junior Division, Court No. 3, Ghaziabad in criminal case no. 2317 of 2008, State v. Pintu and others, whereby the learned Magistrate refused to review the summoning order.
3. The view of the learned Magistrate is perfectly correct and is based on the principles laid down by the Apex Court in the case of Adalat Prasad v. Roop Lal Jindal, 2004 (3) Crimes 350 (SC), therefore, the present revision has no

substance.

4. However, Mr. Gaurav Kakkar submitted that the offences under section 323, 504, 506 I.P.C. are non cognizable offences, therefore, the charge sheet filed by the Investigating Officer cannot proceed as a police case and the same is liable to be proceeded with as a complaint case. He placed reliance on Murli and others v. State of U.P. and another, 2008 (61) ACC 54, Virendra Singh and others v. State of U.P. and others, 2002 (45) ACC 609 and Shakila Bano and others v. State of U.P. and another, 2008 (61) ACC 636.

5. According to the first Schedule to the Code of Criminal Procedure, the offences under sections 323, 504, 506 are non cognizable, therefore, the explanation to section 2 (d) of the aforesaid Code is attracted in this case. Section 2 (d) of the Code of Criminal Procedure is provides:

" (d) "Complaint" means any allegation made orally or in writing to a Magistrate, with a view to his taking action under this Code, that some person, whether known or unknown, has committed an offence, but does not include a police report."

6. Explanation- A report made by a police officer in a case, which discloses, after investigation, the commission of a non-cognizable offence shall be deemed a complaint and the police officer by whom such report is made shall be deemed to be the complainant.

7. In view of the aforesaid explanation, the police report in respect of non cognizable offences is nothing except a complaint within the meaning of section 2(d) of the aforesaid Code, therefore, the trial has to proceed as a complaint case, not as a case instituted on police report. The learned Magistrate is directed to proceed with matter accordingly.

8. With the aforesaid observations, the revision is disposed of.