

[2022 LiveLaw \(SC\) 35](#)

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION
SANJAY KISHAN KAUL; M.M. SUNDRESH, JJ.

January 07, 2022

CRIMINAL APPEAL NO.52 OF 2022 (@SLP (CrI.) No.852 of 2020)

SURESH KANKRA *VERSUS* STATE OF UP & ANOTHER

Code of Criminal Procedure, 1973; Section 156(3) - Magistrate is required to be conscious of the consequences while passing an Order under Section 156 (3) of the Cr.PC. It being a judicial order, relevant materials are expected to be taken note of. (Para 11)

(Arising out of impugned final judgment and order dated 27-11-2019 in A482 No. 21627/2018 passed by the High Court of Judicature at Allahabad)

For Petitioner(s) Mr. Vinod Prasad, Sr. Adv. Mr. Ajay Kumar Srivastava, AOR Ms. Jyoti Tiwary, Adv. For Respondent(s) Mr. Siddharth Dharmadhikari, AAG Mr. Sarvesh Singh Baghel, AOR Mr. Mukhtar Alam, Adv.

ORDER

1. Leave granted.
2. Respondent no. 2 is served but has not put in appearance.
3. Heard learned counsel for the parties and perused the additional documents.
4. The petitioner was arrayed as accused in Case Crime no.318 of 2018 for the offences punishable under Section 376, 354, 354B, 504, 506 IPC and Section 3(2) (v) of the SC/ST Act.
5. The sum and substance of the complaint against the petitioner is that he committed the offense alleged when the respondent no.2 went to the field of one Atal Singh, father-in-law of the petitioner for collecting fodder.
6. The registration of the offense was done in pursuant to the application filed invoking Section 163(3) of the Criminal Procedure Code (Cr.PC) before the jurisdiction of Magistrate. It was alleged that despite oral and written complaints, the respondent no.1 did not choose to register the complaint.
7. The petitioner filed an application under Section 482 Cr.PC to quash the complaint registered dated 02.06.2018 interalia alleging that the entire complaint is fostered against the petitioner who is a retired person by his estranged sister-in-law out of the family dispute. He is not even the resident of that area. A similar complaint was given by her against his son which was closed on investigation as false and motivated. The respondent no.2 is actually a resident of the village Malakpur and she is her domestic help. The petitioner was actually attending the court of Chief Judicial Magistrate, Baghpur at the time of the alleged incident. There are number of litigations going on between the parties including a complaint registered at the instance of the petitioner's mother-in-law against Smt. Asha in Complaint Case No.4916 of 2015 under Sections 323, 504, 354B,

392 IPC. 8. The High Court declined to exercise the power conferred under Section 482 of the Cr.PC inter alia holding that facts being in the realm of dispute, discretion cannot be exercised. The aforesaid order is challenged by the petitioner.

9. Counsel for the petitioner submitted that the relevant facts have not been taken into consideration. The husband of the respondent no.2 himself has given a complaint against her and she is absconding. She is none other than the domestic help of Smt. Asha, who made a similar attempt against the petitioner's son. There are number of proceedings pending between the parties. The petitioner retired on 31.05.2012 as the Deputy Manager of National Textile Corporation Limited, under the Ministry of Textiles, Government of India. The learned Magistrate and the Court of Sessions have not applied their mind to the facts governing and therefore the Order passed by the High Court has to be set aside and consequently the petition filed be allowed.

10. Learned public prosecutor appearing for respondent no.1 submitted that the case has been registered on the directions of the Court. It is further submitted that the investigation reveals that the respondent no.2 was indeed a house help of Smt. Asha. The complaint was closed on finding that it was motivated having given at the instance of Smt. Asha. A protest petition was filed by the respondent no.2 and a direction was issued to the Court to take cognizance and proceed further. The investigation made thus far would reveal the serious dispute between the respondent no.2's employer Smt. Asha on the one side and the petitioner on the other side.

11. Having heard the counsel for the petitioner and the counsel for the respondent no.1, we are of the considered view that it is a fit case where the case registered in Case Crime no. 318 of 2018 is required to be quashed. The Judicial Magistrate is required to be conscious of the consequences while passing an Order under Section 156 (3) of the Cr.PC. It being a judicial order, relevant materials are expected to be taken note of. Similarly, the Court of Sessions shall consider the materials available on record while dealing with the protest petition on a final report filed. For the reasons known to her the respondent no.2 has not chosen to appear before us either to deny or contradict the averments made. Investigation reveals that she was indeed the house help of Smt. Asha. If there is a dispute between the two families, one cannot expect respondent no.2 to go to the place of father-in-law of the petitioner who allegedly taken sides with the petitioner as against Smt. Asha and that too from a different village, for the purpose of collecting the fodder. The petitioner is an aged man and a similar complaint given by the employer of respondent no.2 against his son was found to be not true. Even in the present case, the investigation made thus far reveals that the complaint is motivated. It is obviously an abuse of process of law.

12. In the conspectus of the aforesaid, we allow this appeal and quash the proceedings arising from FIR No.0318 dated 26.2.2018.