

Neutral Citation No. - 2023:AHC:213157

Judgement Reserved on 25.09.2023

Judgement Delivered on 07.11.2023

A.F.R.

Court No. - 92

Case :- APPLICATION U/S 482 No. - 29284 of 2023

Applicant :- Khalid Khan And Another

Opposite Party :- State Of U.P. And Another

Counsel for Applicant :- Sanjay Kumar Rajbhar, Pramod Kumar

Counsel for Opposite Party :- G.A.

Hon'ble Anish Kumar Gupta, J.

1. Heard Shri Pramod Kumar, learned counsel for the applicants and Shri Pankaj Srivastava, learned AGA for the State respondents.

2. The instant application U/S 482 Cr.P.C has been filed seeking quashing of the order dated 28.07.2023 passed by the learned Chief Judicial Magistrate, Ghaziabad in Misc. Case No.1357 of 2023 (Khalid Khan Advocate and another Vs. Mukesh Solanki and others), whereby in an application u/s 156(3) Cr.P.C, learned Magistrate has directed for a preliminary inquiry to be conducted by the Sub Divisional Magistrate, Modinagar, with regard to the allegations made in the application u/s 156(3) Cr.P.C.

3. The brief facts of the case are that one Satyendra Pal was murdered, for which a Case Crime No.620 of 2022 (State Vs. Aakash alias Tasni and others), u/s 302/32, 120-B IPC, was registered at P.S. Muradnagar, District Ghaziabad on the complaint of Sonu Pal S/o deceased Satyendra Pal. Though in the complaint, the accused were named, however, the police after investigation arrested another son of said deceased Satyendra Pal namely Monu Pal for the murder of his father Satyendra Pal. He was produced before the Chief Judicial Magistrate on 10.07.2023 and the police sought the remand of the said accused Monu Pal. The said remand was granted by the learned Chief Judicial Magistrate subject to the following conditions;

"1. यह कि अभियुक्त मोनू पाल पुत्र सतेन्द्र पाल का पुलिस अभिरक्षा रिमांड दिनांक 11.07.2023 को समय प्रातः 10.00 बजे प्रारम्भ होकर से दिनांक 11.07.2023 की सांय 06.00 बजे को रहेगा।

2. विवेचक अभियुक्त को जेल से न्यायिक अभिरक्षा रिमांड पर लेने से पूर्व तथा पुलिस अभिरक्षा रिमांड से जेल में दाखिल किये जाते समय अभियुक्त का मेडिकल परीक्षण करायेगें।

3. अभियुक्त को किसी भी प्रकार में मानसिक व शारीरिक रूप से प्रताड़ित नहीं किया जायेगा। प्रताड़ित नहीं किया जायेगा।

4. अभियुक्त के विद्वान अधिवक्ता अभियुक्त के साथ जा सकते हैं लेकिन वे पुलिस की भी कार्यवाही में कोई बाधा उत्पन्न नहीं करेंगे तथा अभियुक्त से उचित दूरी बनाये रखेंगे।

5. अभियुक्त यदि चाहे तो अपने खर्च पर पुलिस अभिरक्षा रिमांड में हस्तक्षेप किए बिना पुलिस द्वारा की कार्यवाही की वीडियोग्राफी करा सकता है।"

4. The applicants herein are Advocates. In terms of the aforesaid order dated 10.07.2023, escorted the police and after maintaining a distance, he was recording the search operation and making videography of the search operation by the police, which was to be conducted at the indication of said Monu Pal.

5. Learned counsel for the applicant submits during the said search operation, the applicants herein, who are Advocates were escorting the police search operation and were recording the same. The police on reaching the spot where from the alleged recovery has been conducted by the police team, when the police realized that the entire incident was being recorded in the video camera, the police officers stopped the videography, then snatched the video camera of the applicant and the police team forcibly confined the applicant and other persons accompanying the applicant and put them in car and took at some distance and tried to throw them on the "Gang Nahar". The aforesaid act of the police team was in violation of the order dated 10.07.2023. Therefore, the said action by the police was beyond scope and was in violation of the order dated 10.07.2023 and therefore, the applicant herein filed an application u/s 156(3) Cr.P.C for registering the offence against the erring police officers. Whereupon learned Magistrate, vide order dated 28.07.2023 has directed the preliminary inquiry to be conducted by the Sub Divisional Magistrate.

6. Learned counsel for the applicant submits that in the ***Lalita Kumari Vs. Govt. of U.P. and others, AIR (2014)2 SCC 1***, the Apex Court has framed the guidelines and prescribed the five categories of the cases where the learned Magistrate can direct the preliminary inquiry to be conducted.

7. Learned counsel for the applicant submits that the instant case is not covered within the five categories prescribed in the case of ***Lalita Kumari (supra)***, therefore, the order dated 28.07.2023 directing preliminary inquiry is illegal and is in violation of the judgment of the Constitution Bench in ***Lalita Kumari (supra)*** and ***Mrs. Priyanka Srivastava and Anr. Vs. State of U.P. and others, AIR 2015 SC 1758***.

8. Learned counsel for the applicant further relied upon the judgment of the coordinate Bench of this Court in ***Ram Sharan Jatav Vs. State of***

U.P. and 2 others, passed in **Criminal Appeal No.6822 of 2019**, decided on **17.12.2021**.

9. Per contra, learned counsel for the State submits that the aforesaid five categories prescribed in the judgment of Lalita Kumari are illustrative in nature and are not exhaustive, which is apparent from the observation made by the Supreme Court in the following terms;

"The aforesaid are only illustrations and not exhaustive of all conditions which may warrant preliminary inquiry."

10. Therefore, learned counsel for the State submits that the learned Magistrate had wide discretion to conduct and direct the preliminary inquiry in an appropriate case. Learned counsel for the State further submits looking at the nature of allegations made in the instant application u/s 156(3) Cr.P.C, the learned Magistrate has directed the preliminary inquiry, which cannot be faulted with.

11. Having heard learned counsels for the parties, this Court has carefully perused the record of the case.

12. In the case of **Har prasad vs. State of U.P., (2006) 10 ADJ 412**, the Co-ordinate Bench of this Court has held that if the application u/S 156(3) Cr.P.C., discloses the commission of cognizable offence and at the stage of Section 156(3) Cr.P.C., which is the cognizable stage, once the cognizable offence is disclosed through an application, it was the duty of the concerned Court to order for registration and investigation of the offences, as crime detection and crime prevention are the foremost duty of the police and not of the Court.

13. In **Lalita Kumari vs. Govt. of U.P. and Ors. : AIR 2014 SUPREME COURT 187**, the Constitution Bench of the Supreme Court has held as under:

"111. In view of the aforesaid discussion, we hold:

(i) The registration of FIR is mandatory under Section 154 of the Code, if the information discloses commission of a cognizable offence and no preliminary inquiry is permissible in such a situation.

(ii) If the information received does not disclose a cognizable offence but indicates the necessity for an inquiry, a preliminary inquiry may be conducted only to ascertain whether cognizable offence is disclosed or not.

(iii) If the inquiry discloses the commission of a cognizable offence, the FIR must be registered. In cases where preliminary inquiry ends in closing the complaint, a copy of the entry of such closure must be supplied to the first informant forthwith and not later than one week. It must disclose reasons in brief for closing the complaint and not proceeding further.

(iv) The police officer cannot avoid his duty of registering offence if cognizable offence is disclosed. Action must be taken against erring officers who do not register the FIR if information received by him discloses a cognizable offence.

(v) The scope of preliminary inquiry is not to verify the veracity or otherwise of the information received but only to ascertain whether the information reveals any cognizable offence.

(vi) As to what type and in which cases preliminary inquiry is to be conducted will depend on the facts and circumstances of each case. The category of cases in which preliminary inquiry may be made are as under:

(a) Matrimonial disputes/family disputes

(b) Commercial offences

(c) Medical negligence cases

(d) Corruption cases

(e) Cases where there is abnormal delay/laches in initiating criminal prosecution, for example, over 3 months' delay in reporting the matter without satisfactorily explaining the reasons for delay.

The aforesaid are only illustrations and not exhaustive of all conditions which may warrant preliminary inquiry.

(vii) While ensuring and protecting the rights of the accused and the complainant, a preliminary inquiry should be made time-bound and in any case it should not exceed 7 days. The fact of such delay and the causes of it must be reflected in the General Diary entry.

(vii) Since the General Diary/Station Diary/Daily Diary is the record of all information received in a police station, we direct that all information relating to cognizable offences, whether resulting in registration of FIR or leading to an inquiry, must be mandatorily and meticulously reflected in the said diary and the decision to conduct a preliminary inquiry must also be reflected, as mentioned above."

14. In the case of *Mrs. Priyanka Srivastava (supra)*, this Apex Court has held as under:

"26. At this stage it is seemly to state that power under [Section 156\(3\)](#) warrants application of judicial mind. A court of law is involved. It is not the police taking steps at the stage of [Section 154](#) of the code. A litigant at his own whim cannot invoke the authority of the Magistrate. A principled and really grieved citizen with clean hands must have free access to invoke the said power. It protects the citizens but when pervert litigations takes this route to harass their fellows citizens, efforts are to be made to scuttle and curb the same.

27. In our considered opinion, a stage has come in this country where [Section 156\(3\)](#) Cr.P.C. applications are to be supported by an affidavit duly sworn by the applicant who seeks the invocation of the jurisdiction of the Magistrate. **That apart, in an appropriate case, the learned Magistrate would be well advised to verify the truth and also can verify the veracity of the allegations.** This affidavit can make the applicant more responsible. **We are compelled to say so as such kind of applications are being filed in a routine manner without taking any responsibility whatsoever only to harass certain persons.** That apart, it becomes more disturbing and alarming when one tries to pick up people who are passing orders under a statutory provision which can be challenged under the framework of said Act or under [Article 226](#) of the Constitution of India. But it cannot be done to take undue advantage in a criminal court as if somebody is determined to settle the scores. We have already indicated that there has to be prior applications under [Section 154\(1\)](#) and [154\(3\)](#) while filing a petition under [Section 156\(3\)](#). Both the aspects should be clearly spelt out in the application and necessary documents to that effect shall be filed. The warrant for giving a direction that an the application under [Section 156\(3\)](#) be supported by an affidavit so that the person making the application should be conscious and also endeavour to see that no false affidavit is made. It is because once an affidavit is found to be false, he will be liable for prosecution in accordance with law. This will deter him to casually invoke the authority of the Magistrate under [Section 156\(3\)](#). **That apart, we have already stated that the veracity of the same can also be verified by the learned Magistrate, regard being had to the nature of allegations of the case.** We are compelled to say so as a number of cases pertaining to fiscal sphere, matrimonial dispute/family disputes, commercial offences, medical negligence cases, corruption cases and the cases where there is abnormal delay/laches in initiating criminal prosecution, as are illustrated in Lalita Kumari are being filed. That apart, the learned Magistrate would also be aware of the delay in lodging of the FIR."

15. Similarly, the Coordinate Bench of this Court, in **Ram Sharan Jatav (supra)**, this Court has held as under:

"20. Thus, from the findings of the Apex Court and the provisions mentioned above, it is clear that the registration of first information report is mandatory under Section 154 Cr.P.C. **if the information discloses the commission of cognizable offence and no preliminary inquiry is permissible in such a situation.** However, **if the information received does not disclose the commission of cognizable offence but indicates necessity for inquiry the preliminary inquiry may be conducted in order to ascertain whether cognizable offence is disclosed or not.** Though in sub-para 5 of para-111 of the judgement Lalita Kumar (supra) it is mentioned that **the scope of preliminary inquiry is not to verify the veracity or otherwise of the information received but only to ascertain whether the information reveals any cognizable offence, though, in which case preliminary inquiry may be made,** has also been mentioned in sub-para 6 of para-111 of the judgement. **It is clear from the above findings that the**

preliminary inquiry is needed only when the information does not disclose the cognizable offence.

21. In the application under Section 156 (3) Cr.P.C. moved by the appellant, he has mentioned that the "opposite party nos. 2 and 3 hurled caste based abuses and beaten him with kicks and fists." It makes clear that in the application itself commission of cognizable offence has been mentioned so as per judgment of the Apex Court in *Lalita Kumari (supra)* no preliminary inquiry was needed by the Magistrate. The only need was to summon the report whether the case had been registered or not in the police station concerned regarding the complaint. The fact is admitted by the concerned court in the impugned order that the purpose of summoning the police report was only to ascertain the fact as to whether an F.I.R. in the matter had been registered in the police station or not and in the report of police station it is clearly mentioned that no first information report has been registered in the police station concerned regarding allegation made in the application under Section 156 (3) Cr.P.C. "

16. Thus, from the above judgements, it is crystal clear when the application u/S 156(3) Cr.P.C., discloses the cognizable offence, then it is the duty of the concerned Magistrate to direct registration of the F.I.R., which is to be investigated by the Investigation Agency, in accordance with law and if the information received does not disclose the commission of cognizable offence apparently, but indicates necessity for inquiry, the preliminary inquiry may be conducted in order to ascertain whether the cognizable offence is disclosed or not. The scope of the preliminary inquiry is not to verify the veracity or otherwise of the information received but only to ascertain whether the information reveals any cognizable offence, what type of cases the preliminary inquiry can be directed, has been indicated in judgement of the ***Lalita Kumari (supra)*** in paragraph no. 111(vi). However, in the said judgement itself, it has been said that these are the only illustrative categories and not the exhaustive of all conditions, which may warrant the preliminary inquiry. Therefore, the learned Magistrate, if the application u/S 156(3) Cr.P.C, filed before the Magistrate, in the considered opinion of the learned Magistrate, does not discloses the cognizable offence *per se*, but it is indicative of commission of some cognizable offences, the Magistrate has the discretion to direct a preliminary inquiry before directing the registration of the F.I.R. The aforesaid categories mentioned in judgement of ***Lalita Kumar (supra)***,

are not exhaustive and are only illustrative. Therefore, the discretion of the Magistrate cannot be questioned. However, relying upon the aforesaid principles in the instant application u/S 156(3) Cr.P.C., filed by the applicants herein, who are the advocates and who were following the police team in terms of the order of the learned Magistrate, with regard to the recovery at the indication of the accused. Therefore, from the perusal of the said complaint, the cognizable offence is *per se*, not apparently indicated in the said complaint. Therefore, vide impugned order dated 28.07.2023, learned Magistrate has directed to preliminary inquiry in the matter. Therefore, in the facts and circumstances of the case, there is no illegality in the order dated 28.07.2023, passed by the Chief Judicial Magistrate, Ghaziabad, directing the preliminary inquiry into the matter, as the allegations were made with regard to the violation of the order of the learned Magistrate by the police team.

17. Therefore, in the considered opinion of this Court, there is no illegality in the order passed by the learned Magistrate and the instant application is devoid of merits and hereby ***dismissed***.

Order Date :- 07.11.2023
Shubham Arya