

**Court No. - 72**

**Case :-** APPLICATION U/S 482 No. - 26037 of 2022

**Applicant :-** Ruchi Mittal @ Smt Ruchi Garg

**Opposite Party :-** State of U.P. and Another

**Counsel for Applicant :-** Sunil Kumar

**Counsel for Opposite Party :-** G.A.,Bhanu Prakash Singh,Vijay Prakash Mishra

**Hon'ble Umesh Chandra Sharma,J.**

1. Heard Sri Sunil Kumar, learned counsel for the applicant, Sri Pankaj Kumar Tripathi, learned AGA for the State and Sri Bhanu Prakash Singh, learned counsel for opposite party no.2.

2. This application has been moved under Section 482 CrPC to set aside the order dated 25.07.2022 passed by ACJM-I, Gautam Budh Nagar in Criminal Misc. Application No.462 of 2021 (old No.343 of 2021, Smt. Ruchi Mittal Vs. Amit Mittal and others), under Section 156(3) CrPC treating the application under Section 156(3) CrPC to be a complaint case. It is also prayed that after setting aside the impugned order, a fresh order directing the police to register the case and start investigation and to submit investigation report. Alternatively, a prayer is also made to direct the ACJM-I, Gautam Budh Nagar to hear and decide the aforementioned application under Section 156(3) CrPC within a stipulated period of time.

3. At the very outset before entering into merit it would be proper to mention that Sri Bhanu Prakash Singh, learned counsel appeared on behalf of opposite party no.2 without any notice about which it is argued by the learned counsel for the

applicant that he has no locus to appear and argue in the matter. He also pointed out the ordersheet in which earlier on 17.10.2022 it is observed by a co-ordinate Bench of this Court that it is not a revision and Sri Vijay Prakash Mishra, learned counsel (who appeared on behalf of opposite party no.2) has no locus. However, after closer of the argument the learned counsel for the applicant had not opposed the presence, appearance and argument of Sri Bhanu Prakash Singh, learned counsel who appeared on behalf of opposite party no.2.

4. Learned AGA and the learned counsel appearing for opposite party no.2 argued that an application under Section 482 CrPC is not maintainable. Instead of filing a criminal revision the applicant has filed an application under Section 482 CrPC i.e. the present application which is not maintainable.

5. In the connected affidavit the applicant has given the description of the whole episode and about the cases pending between the parties. Admittedly, the applicant is the legally wedded wife of opposite party no.2, Amit Mittal. Opposite party nos.3 and 4 are the father-in-law and mother-in-law of the applicant. Opposite party no.5 is brother of applicant's husband and opposite party no.6 is the wife of opposite party no.5.

6. On the basis of argument of the parties it transpires that instead of this complaint a divorce petition by opposite party no.2 in Bulandshahr and two criminal cases, one under Section 406 IPC and another under Section 420 IPC are also pending. A case under the Guardians and Wards Act and a case under Section 125 CrPC are also pending between the parties and the proceeding of cases under Sections 406 and 420 IPC were stayed by this Court. It is also argued by the learned counsel for the applicant that without any right an application under Section 340 CrPC has been moved by the respondent and till now no

payment of interim maintenance has been made by the opposite parties. According to him since opposite parties are advocate in civil courts at Bulandshahar and Gautam Budh Nagar, therefore, the applicant is unable to prosecute the complaint and since commission of a cognizable offence has been alleged, hence instead of treating the application as complaint, the concerned Magistrate should have allowed the application and should have passed an order to register and investigate the case. Learned counsel for the applicant also argued that first of all the application under Section 156(3) CrPC was moved in the Court of ACJM-II but the PO found it difficult to decide the application as the opposite party no.1 is the practicing lawyer in Gautam Budh Nagar, therefore, on the request of ACJM-II the case was transferred to the Court of ACJM-I but the PO of Court of ACJM-I also found it difficult and wrote a letter to CJM, Gautam Budh Nagar showing his unwillingness to hear and decide the proceeding of application under Section 156(3) CrPC. The Chief Judicial Magistrate, Gautam Budh Nagar declined to transfer the same. Being helpless, the ACJM-I converted the application under Section 156(3) CrPC into a complaint which would not meet the ends of justice and in the attending circumstances the applicant being a lady would not be able to prosecute the complaint.

7. Learned counsel for the applicant pointing out Section 397(2) CrPC argued that the impugned order is an interlocutory order about which no revision lies.

8. Contrary to that learned AGA relied on the citation in **Atul Pandey @ Param Pragyan Pandey Vs. State of UP and another, 2021 LawSuiut (All) 603** decided by a co-ordinate Bench of this Court and argued that the circumstances expressed by the applicant would not change the form. In

aforementioned case the Court citing the judgment in **Jagannath Verma and others Vs. State of UP and another, 2015 (88) AllCriC 1, Lalit Kumari Vs. Government Uttar Pradesh, 2014 (84) All CriC 719, Sukhwai Vs. State of Uttar Pradesh, 2008 CrLJ 472, Sakiri Vasu Vs. State of Uttar Pradesh, 2008 (60) AllCriC 689, Mohd. Yusuf Vs. Afaq Jahan, 2006 (54) AllCriC 530** and in **Gopal Das Sindi Vs. State of Assam, AIR 1961 SC 986** concluded that if an application under Section 156(3) CrPC has been rejected or it has been converted into a complaint, the aggrieved party can prefer revision under Section 397 CrPC. It has also been held that an order regarding rejection of such application or conversion of application under Section 156(3) CrPC into a complaint is not an interlocutory order and it can only be challenged by the aggrieved party by filing revision.

9. The facts of this case and the said case are similar in nature. In **Atul Pandey (supra)** an application under Section 156(3) CrPC was moved by Ali Hasan, which was allowed and it was treated as a complaint. Being aggrieved an application under Section 482 CrPC had been moved about which a question regarding its maintainability was raised. Learned Single Judge referring the aforementioned judicial precedents held that in such circumstances an application under Section 482 CrPC is not maintainable. Relevant part of the judgment is as under:-

*"16. In the light of the law laid down by the Full Bench of this Court in Jagannath Verma (supra), I find that the impugned order is revisable in nature. The appropriate remedy against the impugned order available to the applicant is to file a revision under Section 397 Cr.P.C. instead of approaching this Court in its extraordinary jurisdiction by commencing an application under section 482 Cr.P.C. The prospective accused in the case is entitled to be heard.*

*17. In the wake of the preceding narrative, I find that the law laid down by*

*the Full Bench in Jagannath Verma (supra) is fully applicable to the facts of this case. Judicial discipline prohibits me from entering into the merits of the case made by learned counsel for the applicant.*

*18. The application under section 482 Cr.P.C. is accordingly dismissed on the ground of existence of alternative remedy of filing a revision under section 397 Cr.P.C. available to the applicant."*

10. On the basis of aforementioned discussion, this Court is also in conformity with the principles laid down by the learned Single Judge and is of the opinion that a proceeding under Section 482 CrPC against the impugned order is not maintainable and the applicant should have preferred a revision before the revisional court.

11. Accordingly, this application is dismissed as not maintainable. The applicant is at liberty to institute a revision in the concerned revisional court.

12. Office is directed to return the certified copy of the impugned order to the counsel for the applicant.

**Order Date :- 9.1.2023**  
Shahroz