

Court No. - 84

Case :- APPLICATION U/S 482 No. - 2600 of 2021

Applicant :- Dhanesh Chandra Sharma And Another

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

Counsel for Applicant :- Surjit Kumar

Counsel for Opposite Party :- G.A.

Hon'ble Dr. Yogendra Kumar Srivastava,J.

1. Heard Sri Surjit Kumar, learned counsel for the applicants and Sri Pankaj Saxena, learned A.G.A.-I appearing for the State-opposite party.

2. The present application under Section 482 Cr.P.C. has been filed with a prayer to set aside the order dated 15.12.2020 passed by the District and Session Judge, Mathura in Criminal Revision No. 208 of 2020 (Dhanesh Chandra Sharma and another Vs. State of U.P. and another) whereby the revision has been rejected as being not maintainable.

3. Briefly stated the facts of the case are that an order dated 18.11.2020 was passed upon an application filed by the opposite party no. 2 under Section 156 (3) Cr.P.C. whereby the said application was allowed by the Judicial Magistrate, Mathura with a direction for registration of an F.I.R. and investigation of the case.

4. The revisional court relying upon a decision of a Full Bench of this Court in **Father Thomas Vs. State of U.P. and others**¹, has rejected the revision as being not maintainable.

5. Learned counsel for the applicants has sought to assail the aforesaid order by trying to contend that the criminal proceedings have been initiated maliciously by falsely

1. 2011 (72) ACC 564

implicating the applicants and solely for the purpose to harass the applicants.

6. Learned A.G.A.-I appearing for the State opposite party supports the order passed by the Session Judge, Mathura in terms of which the revision filed by the applicants has been rejected as being not maintainable. To support his contention, he has relied upon the judgment of the Full Bench in the case of **Father Thomas** (supra) which was taken note by the revisional court.

7. The question as to whether the order of the Magistrate made in exercise of powers under Section 156 (3) Cr.P.C directing the police to register and investigate is open to revision at the instance of a person against whom neither cognizance has been taken nor any process issued was subject matter of consideration before the Full Bench wherein the following questions had been referred.

“A. Whether the order of the Magistrate made in exercise of powers under Section 156(3) Code of Criminal Procedure directing the police to register and investigate is open to revision at the instance of a person against whom neither cognizance has been taken nor any process issued?

B. Whether an order made under Section 156(3) Code of Criminal Procedure is an interlocutory order and remedy of revision against such order is barred under Sub-section (2) of Section 397 of the Code of Criminal Procedure, 1973?

C. Whether the view expressed by a Division Bench of this Court in the case of *Ajay Malviya v. State of U.P and Ors.* reported in 2000(41) ACC 435 that as an order made under Section 156(3) of the Code of Criminal Procedure is amenable to revision, no writ petition for quashing an F.I.R registered on the basis of the order will be maintainable, is correct?”

8. The Full Bench after considering the matter at length expressed its opinion on the three questions which had been referred to in the following manner :-

“A. The order of the Magistrate made in exercise of powers under Section 156 (3) Cr.P.C directing the police to register and investigate is not open to revision at the instance of a person against whom neither cognizance has been taken nor any process issued.

B. An order made under Section 156 (3) Cr.P.C is an interlocutory order and remedy of revision against such order is barred under sub-section (2) of Section 397 of the Code of Criminal Procedure, 1973.

C. The view expressed by a Division Bench of this Court in the case of Ajay Malviya Vs. State of U.P and others reported in 2000(41) ACC 435 that as an order made under Section 156 (3) of the Code of Criminal Procedure is amenable to revision, and no writ petition for quashing an F.I.R registered on the basis of the order will be maintainable, is not correct.”

9. In view of the aforesaid opinion expressed by the Full Bench, an order of the Magistrate made in exercise of powers under Section 156 (3) Cr.P.C directing the police to register and investigate is not open to revision at the instance of a person against whom neither cognizance has been taken nor any process issued. It has been further held that an order made under Section 156 (3) Cr.P.C. directing a police officer to investigate a cognizable case is an interlocutory order and the remedy of revision against such order is barred under Section 397 (2) Cr.P.C.

10. It may therefore be reiterated that at the pre-cognizance stage when only a direction has been issued by the Magistrate under Section 156 (3) Cr.P.C. to investigate a prospective accused has no locus standi to challenge a direction for investigation of a cognizable case before cognizance or the issuance of process. It may also be taken note of that the order by the Magistrate directing a police officer to investigate a cognizable case is an incidental step in the aid of investigation and trial and is interlocutory in nature, similar to orders granting bail, calling for records, issuing search warrants,

summoning witnesses and other like matters which do not impinge upon a valuable right of a prospective accused and is, hence, not amenable to a challenge in a criminal revision in view of the bar contained under Section 397(2) Cr.P.C.

11. Counsel for the applicants has not been able to dispute the aforesaid legal position. He submits that the present application may be dismissed as withdrawn.

12. Learned A.G.A.-I appearing for the State-opposite party has no objection to the prayer so made.

13. The application stands accordingly dismissed.

Order Date :- 2.2.2021

Pratima

(Dr. Y.K. Srivastava,J.)