

Court No. - 89

Case :- APPLICATION U/S 482 No. - 33122 of 2023

Applicant :- Sunil Kumar

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

Counsel for Applicant :- Mohit Singh, Ravi Kumar Singh

Counsel for Opposite Party :- G.A.

Hon'ble Deepak Verma, J.

1. Heard learned counsel for the applicant and learned A.G.A. for the State.

2 . This application under Section 482 Cr.P.C. has been filed by the applicant to quash the entire proceedings of Complaint Case No. 1081 of 2022 (Gulveer Singh vs. Sunil Kumar and another), under Section 420 IPC relating to Police Station- Sadar Bajar, District- Shahjahanpur pending in the Court of Additional Civil Judge (J.D.)/ Judicial Magistrate Court No. 38, Shahjahanpur, as well as the impugned order dated 21.01.2021 passed by the Chief Judicial Magistrate, Shahjahanpur and order dated 05.12.2022 passed by the Additional Civil Judge (J.D.)/Judicial Magistrate Court No. 38, Shahjahanpur and also to quash the impugned order dated 12.07.2023 passed by the Additional Sessions Judge Court No. 1 Shahjahanpur in Criminal Revision No. 11 of 2023.

3. Counsel for the applicant submits that the brief facts of the present case are that opposite party no. 2 filed an application under Section 156(3) Cr.P.C. against the applicant and others alleging therein that accused-applicant usurped Rs.50,000/- from the bank account of the complainant. The learned Magistrate called for a report from the police in the matter and police submitted its report on 18.11.2020. He next submits that applicant and other co-accused filed objection stating therein that all the allegations made against the applicant and other co-accused are totally false and fabricated and applicant has been falsely implicated in the present case. The learned Magistrate vide order dated 21.01.2021 treated the application of the opposite party no. 2 as a complaint case after considering the facts and circumstances of the case. He next submits that applicant produced himself as well as two witnesses to support his case but learned Magistrate without applying his judicial mind and without adverting material available on record, summoned the applicant vide order dated 05.12.2022, under Section 420 IPC. He next submits that applicant being aggrieved by order dated 05.12.2022 filed a criminal revision being Criminal Revision No. 11 of 2023. He next submits that the learned Revisional Court dismissed the revision of the applicant vide order dated 12.07.2023. He next submits that the learned Judicial Magistrate as well as the learned Revisional Court have not exercised their jurisdiction in right perspective and both the courts below have erred in passing the impugned orders challenged herein. He next submits that

learned Judicial Magistrate did not apply his judicial mind to the facts and circumstances of the case and also the material available on record.

4. Counsel for the applicant next submits that learned Magistrate did not follow the guidelines of the Hon'ble Apex Court rendered in **Priyanka Srivastava And Another vs. State of Uttar Pradesh And Others** reported in (2015) 6 SCC 287; wherein in paragraph no. 31, the Hon'ble Apex Court has held as under:-

"31. 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. "

5. Counsel for the applicant has also placed reliance over the judgment passed by the Hon'ble Apex Court in **Babu Venkatesh And Others vs. State of Karnataka** reported in (2022) 5 SCC 639; wherein in paragraph nos. 23 and 26, the Hon'ble Apex Court has held as under:-

*"23. After analyzing the law as to how the power under Section 156 (3) of Cr.P.C. has to be exercised, this court in the case of **Priyanka Srivastava and Another v. State of Uttar Pradesh and Others** has observed thus:*

"30. In our considered opinion, a stage has come in this country where Section 156(3) 2 (2015) 6 SCC 287 CrPC 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 the 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.

31. 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 application under Section 156(3) be supported by an affidavit is 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 [(2014) 2 SCC 1 : (2014) 1 SCC (Cri) 524]* are being filed. That apart, the learned Magistrate would also be aware of the delay in lodging of the FIR."

26. This court has further held that, prior to the filing of a petition under Section 156 (3) of the Cr.P.C., there have to be applications under Section 154 (1) and 154 (3) of the Cr.P.C. This court emphasizes the necessity to file an affidavit so that the persons making the application should be conscious and not make false affidavit. With such a requirement, the persons would be deterred from causally invoking authority of the Magistrate, under Section 156 (3) of the Cr.P.C. In as much as if the affidavit is found to be false, the person would be liable for prosecution in accordance with law. "

6. Counsel for the applicant has further placed reliance over the judgment passed by a Division Bench of High Court, Chhattisgarh in **Prashant Vashishta And Others vs. State of Chhattisgarh And Others in Writ Petition (Cr.) No. 177 of 2017**; wherein in paragraph nos. 1 and 18, the Division Bench has held as under:-

"1. The short point involved in the instant writ petition is, whether the learned Additional Sessions Judge (FTC), Durg, is justified in invoking power and jurisdiction under Section 156(3) of the CrPC in directing registration of first information report (FIR) and consequent investigation against the petitioners and to submit final report / closure report after finding compliance with the provisions contained in sub-sections (1) & (3) of Section 154 of the CrPC?

18. Reverting to the facts of the case in light of the aforesaid principles of law laid down by the Supreme Court in Priyanka Srivastava (supra) followed in Vikram Johar (supra) and further followed in Babu Venkatesh (supra), it is quite vivid that respondent No.3 made a complaint under Section 154(1) of the CrPC before the Station House Officer, Police Station Nevai, District Durg on 4-12-2016. However, on being scanned the original record, no application under Section 154(3) of the CrPC is said to have been made by respondent No.3 except the endorsement of the said application under Section 154(1) on 6-12-2016 to S.P. Durg which in our considered opinion cannot be said to be the compliance of Section 154(3) of the CrPC. Their Lordships of the Supreme Court in *Priyanka Srivastava* (supra) followed in *Vikram Johar* (supra) and further followed in *Babu Venkatesh* (supra) have clearly held that applications under Section 154(1) & (3) are required to be made separately and both aspects should be clearly spelt out in the application and necessary documents to that effect shall be filed, but in the instant case, though the application under Section 154(1) has been filed, but no application under Section 154(3) is said

to have been filed clearly stating that on refusal by the Station House Officer such application is being made. Refusal is sine qua non for making application maintainable under Section 154(3) of the CrPC. Respondent No.3 got the application under Section 154(1) of the CrPC endorsed to the Office of the Superintendent of Police two days after making application on 4-12-2016 which cannot be said to be the sufficient compliance of Section 154(3) of the CrPC. Registration of FIR involves serious and devastating consequences on life and liberty of a person against whom the FIR is directed to be made, therefore, strict compliance of Section 154(3) of the CrPC is required to be made which is sine qua non for maintaining an application under Section 156(3) of the CrPC and merely endorsing a copy of application under Section 154(1) of the CrPC to the Superintendent of Police cannot be said to be the strict compliance of Section 154(3) of the CrPC, there has to be a separate and independent application under Section 154(3) of the CrPC after refusal by the SHO to register FIR. Thus, there is total non-compliance of Section 154(3) of the CrPC, as no documents have been filed by the complainant in support of the averments made in paragraph 8 of the application under Section 156(3) of the CrPC."

7. Learned AGA opposes the submissions raised by counsel for the applicant and submits that counsel for the applicant has placed reliance over the judgments of Hon'ble Apex Court, which are related to lodging of first information report and before directing the lodging of first information report some procedure are required to be followed by the learned Magistrate but the dispute in the present case is entirely different from the dispute alleged in the Hon'ble Apex Court judgments.

8. Considered the submissions raised by counsel for the parties and perused the entire record. The Hon'ble Apex Court in paragraph no. 31 of **Priyanka Srivastava** (supra) has observed that there has to be prior applications under Section 154(1) and 154(3) Cr.P.C. while filing a petition under Section 156(3) Cr.P.C. 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 application under Section 156(3) be supported by an affidavit is so that the person making the application should be conscious and also endeavour to see that no false affidavit is made. The brief facts involved in **Priyanka Srivastava** (supra) are that respondent no. 3 in that case on 30.10.2011 filed complaint under Section 156(3) Cr.P.C. against the appellants alleging that there has been under valuation of the property, which was numbered as Complaint Case No. 396 of 2011 wherein Trial Magistrate directed the S.H.O. to register first information report against the appellants. Pursuant to the said order, a first information report no. 298 of 2011 was registered. The Hon'ble Apex Court has discussed regarding direction for lodging the first information report against the accused persons in the that case. The Hon'ble Apex Court has considered that learned Magistrate before issuing direction to register the first information report against the accused persons, must have considered the direction as provided in paragraph 31 of **Priyanka Srivastava** (supra). The Hon'ble Apex Court in paragraph no. 18 of the **Madhao vs. State of Maharashtra** reported in (2013) 5 SCC 615, has discussed that in the case of complaint regarding commission of a cognizable offence, the power under Section 156(3) Cr.P.C. can be invoked by the Magistrate before he takes cognizance of the offence under Section 190(1)(a) Cr.P.C. However, if he once takes such cognizance and embarks upon the

procedure embodied in Chapter XV, he is not competent to revert back to the pre-cognizance stage and avail of Section 156(3) Cr.P.C. The facts of the present case are entirely different from the facts considered and discussed by Hon'ble Apex Court in **Priyanka Srivastava (supra)** and **Babu Venkatesh (supra)**.

9. The facts of the proceedings challenged herein are that on a application under Section 156(3) Cr.P.C., learned Magistrate has treated the application as complaint case and after recording the statements under Sections 200 and 202 Cr.P.C. has taken cognizance and issued summons against the applicant under aforesaid section. The impugned summoning order was challenged before the Revisional Court and the Revisional Court vide order dated 12.07.2023 rejected the revision of the applicant after considering the facts and legal aspects of the provisions provided under Cr.P.C. The Hon'ble Apex Court judgment passed in **Priyanka Srivastava (supra)**, is not applicable in the present case as the facts involved in the present case are entirely different. The argument of counsel for the applicant that before filing an application under Section 156(3) Cr.P.C., it must be annexed with the prior applications under Section 154(1) & 154(3) Cr.P.C., is not required at this stage, if Magistrate summoned the accused person in complaint case. The provisions provided by the Hon'ble Apex Court in **Priyanka Srivastava (supra)** are required to be followed if Magistrate issued direction for lodging of the first information report. The summoning order is just and proper and no interference is warranted by this Court.

10. With the aforesaid observations, the present application under Section 482 Cr.P.C. is **dismissed**.

Order Date :- 13.10.2023

Aditya