

Court No. - 66

Case :- CRIMINAL REVISION No. - 5866 of 2023

Revisionist :- Sandeep Chaurasia

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

Counsel for Revisionist :- Shivam Tiwari, Anand Pandey

Counsel for Opposite Party :- G.A.

Hon'ble Vinod Diwakar, J.

1. Heard Shri R.C. Mishra, Advocate holding brief of Shri Shivam Tiwari, learned counsel for the revisionist, learned A.G.A. for the State and perused the record.
2. The revisionist has assailed the order dated 06.10.2023 passed by Additional Civil Judge (J.D.)/Judicial Magistrate, Court No. 11, Allahabad in Misc. Case No. 97/xii/2023 titled as Sandeep Chaurasia v. Vijay Pal and Others. The revisionist has filed the complaint under Section 156(3) Cr.P.C. seeking registration of F.I.R. against opposite party no. 2.
3. The revisionist's case is that the opposite party no. 2 has restrained and abused the revisionist, and gave beating with fist, and kicked. The accused after that threatened the revisionist to pay Rs. 37,000/-, and also to pay Rs. 50,000/- as Goonda tax, and also snatched the motorcycle bearing number UP 44 AQ 5059 from the revisionist. Narrating the said facts, the revisionist submitted an application before the police for lodging the FIR but the police did not register the case, therefore, he moved an application under Section 156 (3) Cr.P.C. before the competent court for seeking direction for registration of FIR. The said application was dismissed vide order dated 06.10.2023.
4. Learned counsel for the revisionist submits that the court below in a mechanical manner and without application of mind dismissed the application in defiance of the guidelines issued in the case of ***Lalita Kumari v. Govt. of U.P. 2014 (2)***.
5. On the other hand, learned A.G.A. has relied upon judgment of

Hon'ble Supreme Court in ***Priyanka Srivastava and Another v. State of Uttar Pradesh; (2015) 6 SCC 287***, wherein the direction issued in ***Lalita Kumari (supra)*** has been referred. Relevant paragraphs of the judgment are quoted hereinbelow:-

"27. Regard being had to the aforesaid enunciation of law, it needs to be reiterated that the learned Magistrate has to remain vigilant with regard to the allegations made and the nature of allegations and not to issue directions without proper application of mind. He has also to bear in mind that sending the matter would be conducive to justice and then he may pass the requisite order. The present is a case where the accused persons are serving in high positions in the Bank. We are absolutely conscious that the position does not matter, for nobody is above the law. But, the learned Magistrate should take note of the allegations in entirety, the date of incident and whether any cognizable case is remotely made out. It is also to be noted that when a borrower of the financial institution covered under the Sarfaesi Act, invokes the jurisdiction under Section 156(3) CrPC and also there is a separate procedure under the Recovery of Debts Due to Banks and Financial Institutions Act, 1993, an attitude of more care, caution and circumspection has to be adhered to.

28. Issuing a direction stating "as per the application" to lodge an FIR creates a very unhealthy situation in society and also reflects the erroneous approach of the learned Magistrate. It also encourages unscrupulous and unprincipled litigants, like Respondent 3, namely, Prakash Kumar Bajaj, to take adventurous steps with courts to bring the financial institutions on their knees. As the factual exposition would reveal, Respondent 3 had prosecuted the earlier authorities and after the matter is dealt with by the High Court in a writ petition recording a settlement, he does not withdraw the criminal case and waits for some kind of situation where he can take vengeance as if he is the emperor of all he surveys. It is interesting to note that during the tenure of Appellant 1, who is presently occupying the position of Vice-President, neither was the loan taken, nor was the default made, nor was any action under the Sarfaesi Act taken. However, the action under the Sarfaesi Act was taken on the second time at the instance of the present Appellant 1. We are only stating about the devilish design of Respondent 3 to harass the appellants with the sole intent to avoid the payment of loan. When a citizen avails a loan from a financial institution, it is his obligation to pay back and not play truant or for that matter play possum. As we have noticed, he has been able to do such adventurous acts as he has the embedded conviction that he will not be taken to task because an application under Section 156(3) CrPC is a simple application to the court for issue of a direction to the investigating agency. We have been apprised that a carbon copy of a document is filed to show the compliance with Section 154(3), indicating it has been sent to the Superintendent of Police concerned.

29. 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 fellow citizens, efforts are to be made to scuttle and curb the same.

30. In our considered opinion, a stage has come in this country where Section 156(3) 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 Sections 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."

6. On perusal of record, it *prima facie* transpires that the revisionist is a transporter and had booked the truck for transport of goods. Certain commercial dispute arisen between the revisionist and the opposite party no. 2, leading to file the criminal complaint against the opposite party no. 2. On receipt of criminal complaint, the Magistrate sought a status report from the police, which revealed that there was some commercial dispute with regard to some money transaction between the revisionist, opposite party no. 2, and a commission agent Aftab, resident of district Gorakhpur. In fact, the revisionist had abused the transporter and to settle the personal business transaction, the revisionist has filed the application under Section 156(3) Cr.P.C. with concocted facts.

7. On perusal of record and contents of the police report dated

16.08.2023, it transpires that there was a commercial dispute between the parties with respect to some financial transactions, the revisionist cannot be permitted to adopt coercive measures to settle the personal score. In the given facts and circumstances, no cognizable offence is made out.

8. The revision is devoid of merits, hence **dismissed**.

Order Date :- 1.12.2023

Shafique

(Vinod Diwakar, J.)