

GAHC010125952020



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : Crl.Pet./455/2020

GOUTAM DAS AND 3 ORS.
S/O SRI GOPENDRA DAS, R/O VILLAGE ITAGAON, UNDER LANKA POLICE
STATION, DISTRICT HOJAI, ASSAM

2: SUJIT KUMAR DAS
S/O SAILEN DAS
R/O VILLAGE BONBENGENA ATI
UNDER LANKA POLICE STATION
DISTRICT HOJAI
ASSAM

3: BHASKAR DARPHANY
S/O SRI BINOD BORODOLOI
R/O VILLAGE TARADUBI
UNDER DONGKAMOKAM POLICE STATION
DISTRICT KARBI ANGLONG
ASSAM

4: MRINAL KANTI NATH
S/O MAHESH CHANDRA NATH
R/O VILLAGE DAXIN KANDURA
UNDER LANKA POLICE STATION
DISTRICT HOJAI
ASSA

VERSUS

THE STATE OF ASSAM AND ANR.
REPRESENTED BY PP, ASSAM

2: AJIT KUMAR NATH
S/O SRI HARENDRA CHANDRA NATH
R/O VILLAGE DAKHIN KANDURA
PS LANKA

PO SANKARDEV NAGAR
DISTRICT HOJAI
ASSA

Advocate for the Petitioner : MR. D K BAIDYA, MR D GOGOI

Advocate for the Respondent : PP, ASSAM, MR. S A AHMED, MS F AHMED, MISS M GOGOI

BEFORE
HONOURABLE MR. JUSTICE KAUSHIK GOSWAMI

ORDER

Date : 22.08.2024

Heard Mr. D. K. Baidya, learned counsel for the petitioners. Also heard Mr. S. A. Ahmed, learned counsel for the respondent no. 2 and Mr. R. R. Kaushik, learned Additional Public Prosecutor for the State of Assam.

By filing this Application under Section 482 of Code of Criminal Procedure, the petitioners are seeking quashing of the impugned order dated 21.01.2019 passed by the Learned Judicial Magistrate First Class, Hojai directing the registration of the FIR in Lanka P.S. Case No. 105/2019 under Section 156(3) CrPC and the consequent registration of the FIR being Lanka P.S. Case No. 105/2019 registered under Section 420/468/409 of IPC read with Section 7 and 13(1)(c)(d) of the Prevention of Corruption Act.

The case of the prosecution in brief is that on 17.09.2018 the complainant filed a complaint petition before the Court of learned Sub-Divisional Judicial Magistrate, Hojai alleging inter-alia that the FIR mentioned accused/petitioner nos. 1 and 2 submitted false bills for

building materials for the construction of Bharat Nirman Rajib Gandhi Sewa Kendra Building under Kandura Buragaon Gaon Panchayat for the session 2016-17 and 2017-18 and a false completion report was provided by the concerned J.E. and public money was misappropriated in-connivance with the B.D.O. and J.E.

It is further alleged that the petitioner nos. 3 and 4 also submitted false inspection reports regarding four numbers of road improvement works under MNREGA scheme and money has been released to the petitioner nos. 1 and 2 without supplying any materials.

It is further alleged that sanctioned money regarding improvement of a road from Jiten Kathar's House to PMG road has been misappropriated by the accused persons in connivance with the then post master of Sankardev Nagar Post Office.

Mr. D. K. Baidya, learned counsel for the petitioners submits that the order of the Jurisdictional Magistrate in directing investigation under Section 156(3) of the CrPc is erroneous in law in as much as the complainant has filed the subject complaint under Section 156(3) of the CrPC directly without resorting to the provisions of Section 154(1) and 154(3) of the CrPC.

He further submits that non-compliance of Section 154(1) and 154(3) which are mandatory provisions, the order of the Jurisdictional Magistrate impugned in the present revisional petition is totally erroneous in law.

He accordingly submits that the consequent registration of the FIR is also erroneous.

Mr. R. R. Kaushik, learned Additional Public Prosecutor submits that it is evident from the statement of the complainant recorded under Section 161, CrPC by the Investigating Officer, which is available in the case diary, that he has not approached before the Officer-in-Charge of the Jurisdictional Police Station under Section 154(1) and 154(3) of the CrPC.

Mr. S. A. Ahmed, learned counsel for the respondent no. 2 fairly submits that the complainant has not resorted to the provisions of Sections 154(1) and 154(3) of the CrPC prior to filing the complaint before the Magistrate under Section 156(3) CrPC. He however submits that leave be granted to approach the Officer-in-charge of the Jurisdictional Police Station under Section 154(1) CrpC.

Heard the submissions of the learned counsel for the parties and perused the materials available on record.

It is by now well settled that complainant must exhaust the remedy available under Sections 154(1) and 154(3) of the CrPC before approaching the Magistrate under Section 156(3) of the CrPC.

Reference in this regard is made to the decisions of the Apex Court in the case of ***Priyanka Srivastava and Another Vs State of Uttar Pradesh And Others reported in (2015) 6 SCC 287 and Babu Venkatesh And Others Vs State of Karnataka And Another reported in (2022) 5 SCC 639.***

Reference is also made to the decision of this Court in the case of ***Archana Varma@ Archana Barma Vs State of Assam And Ors reported in (2015) 4 GLR 1.***

Apt to refer to Paragraphs 29, 30 and 31 of Priyanka Srivastava (Supra) which is reproduced hereunder for ready reference:-

“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 d 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 are being filed. That apart, the learned Magistrate would also be aware of the delay in lodging of the FIR.”

Reference is also made to the decision of the Bombay High Court in the case of ***Enercon GMBH and Others Vs State of Maharashtra through Sr. Inspector of Police and Others reported in 2016 SCC Online Bom 4867.***

Paragraph 10 and 11 of the decision of the Bombay High Court is reproduced hereunder for ready reference:-

“10. We are not inclined to accept the contention of the learned counsel for the respondent no. 2 that the provision of Section 154(1) of the Code is directory in nature. The decision in the case of State v. S. Gnashwaran have no bearing upon the facts of the case in hand as it relates to the interpretation of section 154(2) of the Code, I.e. implication of not providing copy of F.I.R., which is held to be directory. The Interpretation of Section

154(1) of the Code was not the subject matter for consideration in the said case. So also the decision in WP No. 270 of 2009 has no bearing upon the facts of the present case as the decision in said petition was taken purely on the basis of facts of the said case. We are bound by the decision of the Full Bench in the case of Panchabhai Butani (supra).

11. In the case of Priyanka Srivastava v. State of U.P. (Supra) the Apex Court has observed that the remedy available under section 156(3) of the Code is not of a routine nature and exercise of powers thereunder requires application of judicial mind. It is further observed that the powers under section 156(3) can not be invoked by the litigant on his own whim to harass others and the same can be invoked only by a principled and really aggrieved citizen approached with clean hands. It is further held that the order under section 156(3) can be passed by the Magistrate, where there is prior applications under section 154(1) and 154(3) while filing the petition under section 156(3). The Apex Court has categorically observed that both the aspect of filing of applications under sections 154(1) and 154(3) prior to filing of the petition under section 156(3) of the Code should be clearly spelt out in the application and necessary documents to that effect shall be filed.”

In the present case the accompanying affidavit in the complaint petition (CR Case No. 1050/2018) does not indicate as whether the complainant has approached the Officer-in-Charge of the Jurisdictional Police Station before filing the complaint before the Magistrate Court.

A copy of the said affidavit is reproduced hereunder for ready reference:-

I, Shri Ajit Nath, aged about 37 years, S/o Sri Harendra Ch. Nath, R/O Village – Dikhin Kandura, P.O. Sankardev Nagar, P.S. Lanka, Dist- Hojai,

Assam, Pin- 782442 do hereby solemnly affirm and swear as follows:-

- 1. That I am the complainant in the instant Complaint case and as such I am well acquainted with the facts and circumstances of the case and competent to swear this affidavit.*
- 2. That the statements made in the affidavit and in paragraph No. 1,3,4,5,6,7,8& 9 are true to the best of my knowledge and belief and those made in paragraph No. 2 is true to my information being matter of record derived there from which I believe to be true and the rest are my humble submissions before this Hon'ble Court.*

-OATH-

"I swear that this, my declaration is true that it conceals nothing and that no part of it is false, so help me God."

And I sign this affidavit on this day of 2018 at Hojai

It further appears that the complainant while being examined under Section 161 CrPC has also not stated anything as regards approaching the Officer-in-Charge of the Jurisdictional Police Station under Section 154(1) and 154(3) of the CrPC before filing the complaint before the Magistrate Court under Section 156(3).

Be that as it may, in view of the endorsement made by the learned counsel for the respondent no. 2, for the end of justice, this Court is of the considered view that this petition can be disposed of by providing liberty to the respondent no. 2 to approach the In-charge Officer of the Jurisdictional Police Station under Section 154(1) of CrPC.

Ordered accordingly.

Resultantly, the impugned order dated 21.01.2019 passed by the Judicial Magistrate and the FIR dated in connection with Lanka P.S. Case No. 105/2019 (GR Case No. 500/2019) are set aside and quashed.

All points and contentions of the parties are expressly kept open .

Disposed of.

JUDGE

Comparing Assistant