

Court No. - 86

Case :- CRIMINAL REVISION No. - 4151 of 2023

Revisionist :- Mahesh Pandey

Opposite Party :- State Of U.P. And 2 Others

Counsel for Revisionist :- Siddhartha Srivastava

Counsel for Opposite Party :- G.A.

Hon'ble Ram Manohar Narayan Mishra,J.

1. Instant Criminal Revision has been preferred under Section 397/401 Cr.P.C. by the complainant assailing the order dated 01.05.2023 passed by learned Additional Session Judge/ Special Judge (PC Act) Room No.1, Bareilly, in Complaint Case No.5 of 2022. The learned Special Judge has dismissed the complaint under Section 203 Cr.P.C.
2. Heard learned counsel for the revisionist and learned A.G.A. for the State-respondent and perused the material available on record.
3. Notice has been served on respondent Nos. 2 and 3 and counter affidavit has been filed on behalf of respondents, which is sworn by respondent No.2. Rejoinder affidavit has also been filed on behalf of revisionist.
4. To recapitulate the factual matrix of the case on the basis of material on record, an application under Section 156(3) Cr.P.C. was filed before the court of Special Judge by the revisionist with allegations that one quack doctor Jamshed Khan is accused in Case Crime No. 356 of 2017 and Case Crime No.1030 of 2017, at Police Station Izzat Nagar, District Bareilly. Jamshed Khan a land mafia and is also a member of the gang of Gangster Ramesh Maurya, the complainant made several complaints against said quack Dr. Jamshed Khan and got cases registered against him under Indian Medical Act and also under the provisions of Indian Penal Code due to his involvement in foeticides. This fact has also

been admitted by doctor Jamshed Khan in Case No. 803 of 2015 pending in the Court of ACJM-IV. Complaints were also made from time to time against respondent No.2, Mukesh Singh Sub Inspector posted in Bareilly by brother-in-law of the applicant. Photo copies thereof were filed alongwith application under Section 156(3) Cr.P.C. To retaliate against these complainants, said Dr. Jamshed Khan, Station House Officer P.S. Qila Bareilly, Manoj Kumar and Sub Inspector Mukesh Kumar have got a case registered against applicant vide Case Crime No.380 of 2019 under Sections 307, 323, 504, 506 and 386 IPC, at P.S. Qila for an incident dated 21.10.2019. Whereas applicant was lodged in District Jail Bareilly at the time of said incident. The sister-in-law of the applicant Dr. Anupama Raghav had filed certain documents and produced certain witnesses during investigation to establish falsity of said case lodged against the applicant, but same was not made part of the investigation.

5. On the other hand, irrelevant evidence produced by Dr. Jamshed Khan were made part of investigation. On 06.12.2019 Section I. Mukesh Singh visited the place of the applicant and asked the wife and sister-in-law of the applicant that if they want to save him, they will have to pay Rs. 3 Lakh in bribe, otherwise he will be made accused by summoning him from jail. When wife of the applicant Shalini Pandey and his sister-in-law Anupama Raghav refused to oblige him, the said Sub Inspector and SHO Manoj Kumar held a criminal conspiracy and made him an accused by summoning him from jail.

6. The learned Special Judge called for a report from P.S. concerned on said application under Section 156(3) Cr.P.C., and in compliance thereof report was submitted by P.S. concerned in which it is stated that no criminal case is registered in respect of the allegations made in the application and criminal history of the cases registered against the applicant was produced.

7. Learned Special Judge observed that the applicant may prove his case by producing his witness in the Court and no case of investigation by police under Section 156(3) is made out. The application was treated as complaint vide order dated 28.03.2022. However, the Presiding Judge has signed showing the date 28.04.2022 thereon.

8. Statement of complainant under Section 200 Cr.P.C. and that of witnesses PW1 Kunal Mehrotra and Akanksha daughter of Rakesh Kumar was recorded under Section 202 Cr.P.C. during inquiry. Learned Special Judge after considering the allegations made in complaint and material on record including police report submitted on an application under Section 156(3) Cr.P.C. found that there are no sufficient grounds to summon the accused persons who are police officials, for trial and dismissed the complaint under Section 203 Cr.P.C.

9. Learned counsel for the revisionist submits that admittedly the complainant had moved an application under Section 156(3) Cr.P.C. at initial stage, on which a police report was filed by S.P. Ajeet Singh of P.S. concerned on direction of the Court below wherein criminal history of eight cases registered against the applicant is enumerated. It is also stated therein that the application under Section 156(3) was filed by the applicant only with a view to exert pressure on the opposite party, who are police officials, in a criminal case registered vide Crime No.380 of 2019 against the applicant, in which crime of incident is shown as 09/10.10.2019. The said FIR is not related to any incident dated 19.10.2019, as stated in the application. The allegations made in the application are false and in no way connected with Case Crime No.380 of 2019.

10. In concluding part, it is also stated in P.S. report that in such cases sanction of State Government under Section 197 Cr.P.C. for prosecution of police officials is required.

11. Learned counsel for the applicant/revisionist submitted that the procedure adopted by learned Special Judge in the impugned order is contrary to law. Learned Special Judge while dismissing the complaint under Section 203 Cr.P.C. has taken into consideration the police report submitted at pre-cognizance stage, this is not permissible under law. The pre-cognizance police report cannot be considered at post-cognizance stage.

12. The Court is supposed to take cognizance of an offence on a complaint case as soon as it applies its judicial mind in the complaint and proceed to act under Section 200/202 Cr.P.C. Admittedly, no police investigation was directed at the stage of 202 Cr.P.C. in the case. Thus, the order is vitiated on single ground that the material brought before the court by way of police report at pre-cognizance stage has been made basis of dismissal of complaint at post-cognizance stage. He next submitted that the quack doctor Jamshed Khan and opposite parties who are police officials are hand in glove with each other, and false case was registered against the complainant vide Crime No.380 of 2019 at P.S. concerned when he was lodged in jail custody and he was remanded to custody in said case after summoning him from jail.

13. Learned counsel for the revisionist also submitted that Section 203 of Cr.P.C. under which the complaint has been dismissed provides that, If, after considering the statements on oath (if any) of the complainant and of the witnesses and the result of the inquiry or investigation (if any) under section [202](#), the Magistrate is of opinion that there is no sufficient ground for proceeding, he shall dismiss the complaint, and in every such case he shall briefly record his reasons for so doing.

14. Learned counsel for the revisionist submitted that provision of 203 Cr.P.C. implies that only a police investigation filed under Section 202 Cr.P.C. and evidence of witnesses recorded under Section 200/202

Cr.P.C. can be taken into consideration at the stage of deciding question of issuance of process against the accused.

15. Learned counsel for the revisionist placed reliance on a judgment of Hon'ble Apex Court in **Devarapalli Lakshminarayana Reddy and others V V. Narayana Reddy and others** 1976 (3) SCC 252 in support of his case taken in the present revision. Learned counsel has specifically drawn attention of the Court towards paragraph No 14 and 17 of the said judgment, which are reproduced as under:-

“14. This raises the incidental question: What is meant by "taking cognizance of an offence" by a Magistrate within the contemplation of Section 190? This expression has not been defined in the Code. But from the scheme of the Code, the content and marginal heading of Section 190 and the caption of Chapter XIV under which Section 190 to 199 occur, it is clear that a case can be said to be instituted in a Court only when the Court takes cognizance of the offence alleged therein. The ways in which such cognizance can be taken are set out in clauses (a), (b) and (c) of Section 190(1). Whether the Magistrate has or has not taken cognizance of the offence will depend on the circumstances of the particular case including the mode in which the case is sought to be instituted and the nature of the preliminary action, if any, taken by the Magistrate. Broadly speaking, when on receiving a complaint, the Magistrate applies his mind for the purposes of proceeding under Section 200 and the succeeding sections in Chapter XV of the Code of 1973, he is said to have taken cognizance of the offence within the meaning of Section 190(1)(a). If, instead of proceeding under Chapter XV, he has in the judicial exercise of his discretion, taken action of some other kind, such as issuing a search warrant for the purpose of investigation, or ordering investigation by the police under Section 156(3), he cannot be said to have taken cognizance of any offence.

17. Section 156(3) occurs in Chapter XII, under the caption: "Information to the Police and their powers to investigate"; while Section 202 is in Chapter XV which bears the heading "Of complaints to Magistrates". The power to order police investigation under Section 156(3) is different from the power to direct investigation conferred by Section 202(1). The two operate in distinct spheres at different stages

*of cognizance. The first is exercisable at the pre-cognizance stage, the second at the post-cognizance stage when the Magistrate is in **seisin** of the case. 'That is to say in the case of a complaint regarding the commission of a cognizable offence, the power under Section 156(3) can be invoked by the Magistrate before he takes cognizance of the offence under Section 190(1)(a). But if he once takes such cognizance and embarks upon the procedure embodied in Chapter XV, he is not competent to switch back to the pre-cognizance stage and avail of Section 156(3). It may be noted further that an order made under sub-section (3) of Section 156, is in the nature of a peremptory reminder or intimation to the police to exercise their plenary powers of investigation under Section 156(1). Such an investigation embraces the entire continuous process which begins with the collection of evidence under Section 156 and ends with a report or chargesheet under Section 173. On the other hand Section 202 comes in at a stage when some evidence has been collected by the Magistrate in proceedings under Chapter XV, but the same is deemed insufficient to take a decision as to the next step in the prescribed procedure. In such a situation, the Magistrate is empowered under Section 202 to direct within the limits circumscribed by that section, an investigation "for the purpose of deciding whether or not there is sufficient ground for proceeding ". Thus the object of an investigation under Section 202 is not to initiate a fresh case on police report but to assist the Magistrate in completing proceedings already instituted upon a complaint before him."*

16. Learned counsel also placed reliance on a judgment of Hon'ble Supreme Court in **National Bank of Oman Vs. Barakara Abdul Aziz and others** 2013(2) SCC 488, paragraph No.9 of the said judgment is reproduced as under:-

"9. The duty of a Magistrate receiving a complaint is set out in Section 202 of the Cr.P.C. and there is an obligation on the Magistrate to find out if there is any matter which calls for investigation by a criminal court. The scope of enquiry under this Section is restricted only to find out the truth or otherwise of the allegations made in the complaint in order to determine whether process has to be issued or not. Investigation under Section 202 of the Cr.P.C. is different from the investigation contemplated in Section 156 as it is only for holding the Magistrate to decide whether or not there is sufficient grounds for him to

proceed further. The scope of enquiry under Section 202 of the Cr.P.C. is, therefore, limited to the ascertainment of truth or falsehood of the allegations made in the complaint:

(i) on the materials placed by the complainant before the Court

(ii) for the limited purpose of finding out whether a prima facie case for issue of process has been made out; and

(iii) for deciding the question purely from the point of view of the complainant without at all advert to any defence that the accused may have.”

17. Per contra, learned A.G.A. submits that complaint is driven by malafide and has been filed with ulterior motive of harassing the police officials who had registered a case against the applicant/complainant in discharge of their official duties, prior to filing of application under Section 156(3) Cr.P.C. against them. The allegations made in complaint are false and fabricated.

18. The complainant is credited with criminal history of eight cases and complaint has been filed only with a view to exert pressure on opposite parties, who are police officials. The complainant had not brought true facts before the court below and the essential facts were brought to the notice of the court by P.S. concerned in its report submitted on the directions of the court at the stage of pendency of application under Section 156(3) Cr.P.C. There is no illegality or perversity in the impugned order and revision is devoid of merit and deserves to be dismissed.

19. 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**, (2015) 6 SCC 287 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 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.”*

20. The Hon’ble Supreme Court in **Babu Venkatesh and others Vs. State of Karnataka and another** placed reliance on **Priyanka Srivastava and another Vs. State of U.P and others** (supra) observed as under:-

25. This court has clearly held that, a stage has come where applications under Section 156 (3) of Cr.P.C. are to be supported by an affidavit duly sworn by the complainant who seeks the invocation of the jurisdiction of the Magistrate.

26. This court further held that, in an appropriate case, the learned Magistrate would be well advised to verify the truth and also verify the veracity of the allegations. The court has noted that, applications under Section 156 (3) of the Cr.P.C. are filed in a routine manner without taking any responsibility only to harass certain persons.

27. 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.

21. The main plank of allegations in the instant complaint case is that the respondents who are police officials were hand in glove with quack doctor Jamshed Khan, whereas he is an identified history- sheeter in the records of P.S. Izzat Nagar. When the complainant and his relatives had filed various complaints against the said doctor Jamshed Khan, he got a criminal case registered against the revisionist vide Crime No.380 of 2019 at Police Station Quila District Bareilly by hatching a conspiracy with respondent/police officials and investigation thereof was entrusted to S.I. Mukesh Singh, who is an accused in this complaint case. It is difficult to conceive that when the said criminal case was already registered on 21.10.2019 against the revisionist with regard to incident dated 09.10.2019, which is wrongly shown as 19.10.2019 in application under Section 156(3) Cr.P.C., the precursor of the complaint, what was the occasion for respondent No.2 to visit the wife and sister-in-law of the

complainant and demanding Rs.3 Lakh as bribe from them and extruding threat that if he has not been obliged by them he would make the revisionist an accused in the case and which the ladies duo refused to act under his pressure, he got the revisionist summoned from jail conspiring with the informant and Station House Officer Manoj Kumar (respondent No.2) and got him remanded to custody.

22. Admittedly the respondent Nos. 2 and 3 are police officials and sanction of envisaged under Section 197 Cr.P.C. to prosecute them for any offence committed in discharge of their official duties is required, whereas no sanction is required. The main charge against them relates to Prevention of Corruption Act and special provision for sanction is provided under Prevention of Corruption Act 1988. In fact, no sanction under Section 19 of the Act has been taken by the complainant to prosecute them, from competent authority. It is admitted fact that the revisionist is an accused in a criminal case which was being investigated by respondent No.2.

23. Although the report submitted by police station on application under Section 156(3) Cr.P.C. cannot form basis of rejection of application, yet this fact cannot be overlooked that some essential facts were brought to the notice of the court in the said P.S. report related to this case, which includes criminal antecedents of the revisionist who is credited with eight criminal cases lodged against him which includes serious offences like robbery and extortion etc. The police report has been submitted on directions of the court after conducting preliminary inquiry. The complainant has filed an incomplete typed copy of P.S. report in which only four criminal cases are shown against him whereas in counter affidavit its certified copy has been filed which shows as many as eight criminal cases lodged against him.

24. In **Priyanka Srivastava and another Vs. State of U.P. and others** (supra) the Hon'ble Apex Court felt necessity of undertaking preliminary inquiry under the directions of a Magistrate that application under Section 156(3) Cr.P.C. has been filed particularly in category of cases like matrimonial dispute/family disputes/commercial offences/medical negligence cases, corruption cases and the cases where there is abnormal delay/latches in initiating criminal prosecution, for example over three months delay in reporting the matter without satisfactorily explaining the reasons for delay.

25. In **Anil Kumar & others vs M.K Aiyappa & another 2013 (10) SCC 705** Supreme Court held in a case under prevention of corruption act that the scope of Section 156(3) Cr.P.C. came up for consideration before this Court in several cases. This Court in **Maksud Saiyed vs State Of Gujarat & Ors 2008 (5) SCC 668** examined the requirement of application of mind by the Magistrate before exercising the jurisdiction under Section 156(3) Cr.P.C. and held that where jurisdiction is exercised on a complaint filed in terms of Section 156(3) Cr.P.C. or Section 200 Cr.P.C, the Magistrate is required to apply his mind, in such a case, the Special Judge/Magistrate cannot refer the matter under Section 156(3) Cr.P.C. against the public servant without a valid sanction order. The application of mind by Magistrate should be reflected in the order. Though a detailed expression of his views is neither required nor warranted.

26. With foregoing discussion, I am of the considered opinion that there is no illegality or irregularity or perversity in the impugned order passed by the learned trial court, whereby the complaint has been dismissed under Section 203 Cr.P.C. The revision is devoid of merit and is liable to be dismissed.

27. The revision is **dismissed**.

Order Date :- 17.10.2024

Ashish/-