



CNR: KAHC010114512019

NC: 2026:KHC:41629
CRL.P No. 1452 of 2019

IN THE HIGH COURT OF KARNATAKA AT BENGALURU
DATED THIS THE 6TH DAY OF AUGUST, 2026
BEFORE
THE HON'BLE MR. JUSTICE RAVI V HOSMANI
CRIMINAL PETITION NO. 1452 OF 2019

BETWEEN:

1. MRS AMRITANJALI AGARWAL
D/O AGARWAL
AGED ABOUT 37 YEARS
2. MRS MANJU AGARWAL
D/O AGARWAL
AGED ABOUT 60 YEARS
3. MR. AHILAV AGARWAL
S/O AGARWAL
AGED ABOUT 30 YEARS

DIRECTORS,
AGARWAL POLYSACKS LTD.,
ALL ARE R/A E-649
MIA BASNI, II PHASE
JODHPUR - 342 001.

...PETITIONERS

(BY SRI VIVEK N., ADVOCATE)

AND:

1. PRITAM SHETTY
S/O N CHANDRASHEKAR SHETTY
AGED ABOUT 48 YEARS
2. UMASHANKAR SHETTY
S/O LATE RAGHURAM SHETTY
AGED ABOUT 54 YEARS

Digitally signed
by ANUSHA V
Location: High
Court of
Karnataka



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RESPONDENTS NO.1 AND 2 ARE
PARTNERS,
M/s. PROTECH,
HAVING OFFICE AT NO.16-B
KIADB INDUSTRIAL AREA
BIDADI, TALAKUPPE
MANCHANAYAKANAHALLI
RAMANAGAR
BANGALORE - 562 109.

...RESPONDENTS

(BY SRI SAMPATH ANAND, ADVOCATE)

THIS CRL.P IS FILED U/S.482 CR.P.C PRAYING TO
QUASH THE ORDER DATED 26.10.2018 PASSED IN
P.C.R.NO.311/2018 BY ADDITIONAL CIVIL JUDGE AND JMFC,
RAMNAGAR, VIDE ANNEXURE A AND CONSEQUENTLY TO
QUASH THE ENTIRE PROCEEDINGS IN C.C.NO.1014/2018
PENDING ON THE FILE OF THE ADDITIONAL CIVIL JUDGE AND
JMFC, RAMNAGAR.

THIS PETITION, COMING ON FOR *ORDERS*, THIS DAY,
ORDER WAS MADE THEREIN AS UNDER:

CORAM: HON'BLE MR. JUSTICE RAVI V HOSMANI

ORAL ORDER

Seeking for quashing of order dated 26.10.2018 passed
by Additional Civil Judge and JMFC, Ramanagar, in PCR
no.311/2018, taking cognizance of offence and registration of
CC no.1014/2018, for offences punishable under Sections 403,
405, 406, 415, 418, 463, 464, 465 and 471 of Indian Penal
Code, 1860, (**IPC**), this petition is filed.



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2. Sri Vivek, N, learned counsel for petitioners submitted that petitioners were accused in a private complaint filed by respondents in PCR no.311/2018, wherein they stated that complainants were partners of firm M/s.Protech, which had business transactions with Agarwal Polysacks Limited, (**APL**) of Jodhpur, of which accused herein were directors. That as per accounts maintained in firm of complainants in regular course of business, said APL used to supply packaging material to firm at Ramanagar. That in year 2013, complainants were due to APL a sum of Rs.55,00,000/- towards supply of packaging materials, insisted on handing over of 11 cheques for Rs.5,00,000/- each drawn on current account of firm maintained with Vijaya Bank at Ramanagar by way of security to cover up outstanding. In fact, after collecting cheques, amount due was cleared by NEFT. It was assured by APL that cheques collected would not be presented for collection. However, subsequently accused took undue advantage of cheques given by complainant's firm to APL and presented for payment in July, 2017. Same was in furtherance of illegal object of creating said document with dishonest intention a



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private complaint alleging offence under provisions of Negotiable Instruments Act, 1881 (**NI Act**) despite there being no legally recoverable debt, filed even after settlement of entire dues by complainant's firm and issuance of acknowledgment of settlement by APL. Thus, accused had committed offences and sought for initiation of proceedings. It was submitted that complaint was filed on 15.09.2018 and on 20.09.2018, sworn statement of complainant was recorded and documents C1 to C11 were marked. Based on material, Magistrate passed order dated 26.10.2018 taking cognizance and for issuance of summons to accused.

3. It was submitted that initiation of said proceedings would be illegal and abuse of process for several reasons. It was firstly submitted that there was no averment in complaint about compliance with Section 154(3) of CrPC. Complainants had not stated that prior to filing of private complaint, they had approached jurisdictional police station to register complaint and same was refused and thereafter they had also approached Superintendent of Police with complaint. Further private complaint was not accompanied by an affidavit containing



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allegations against accused as directed by Hon'ble Supreme Court in case of **Priyanka Srivastava & Anr v. State Of U.P.& Ors** reported in **2015 (6) SCC 287**. It was submitted that private complaint filed by respondents herein was nearly a year after filing of private complaint by accused against complainants herein for offences punishable under NI Act, which would indicate that impugned private complaint was as a counter blast. It was also contended that claim of complainants that cheques were given as security and not towards discharge of legally enforceable debt would be in nature of a defense to be examined by Court in proceedings under NI Act. It was further submitted that an order of issuance of process was required to be by a reasoned order and manner of passing of impugned order would not confirm said requirement. On said ground also petitioners were entitled to succeed.

4. Sri Sampath Anand Shetty, learned counsel for respondent on other hand opposed petition. It was submitted that in a complaint filed under Section 200 of CrPC, Magistrate would be justified in taking cognizance of offences upon recording of sworn statement and in case contents of sworn



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statement and material placed indicated cognizable offences. It was submitted that since Magistrate had passed order taking cognizance after recording of sworn statement and marking of documents, even without a detailed order traversing material, it could not be held that there was no application of mind and manner of passing of order could not be faulted. In support of said submission, learned counsel relied upon decision of Hon'ble Supreme Court in **Bhushan Kumar and Anr. v. State (NCT of Delhi) and Anr.** reported in **2012 (5) SCC 424**. In support of proposition that the judicial discretion exercised by learned Magistrate taking cognizance without directing police to conduct investigation would be justified, learned counsel relied on decision of Hon'ble Supreme Court in case of **Dilawar Singh v. State of Delhi** reported in **2007 AIR SCW 5899**. It was submitted that reference for investigation by police prior to taking cognizance was not mandatory. Learned counsel relied upon decision of Hon'ble Supreme Court in case of **Fakhruddin Ahmad v. State of Uttaranchal and Anr.** reported in **(2008) 17 SCC 157** with regard to scope for interference by High Court under Section 482 against an order of Magistrate taking



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cognizance. It was submitted that an order of issuance of summons to accused did not foreclose remedies of accused and they would be entitled to file application for discharge and have their contentions considered by Court. Under above circumstances, order passed taking cognizance after finding material placed by complainant in his sworn statement as well as documents marked could not be scuttled at inception stage. On said grounds sought for dismissal.

5. Heard learned counsel and perused material on record.

6. This petition is by accused challenging initiation of proceedings on a private complaint filed by respondents. Main grounds urged are non-compliance with requirement of Section 154(3) of CrPC as well as non-filing of an affidavit containing material allegations against accused as mandated by Hon'ble Supreme Court in **Priyanka Srivastava's** case. A perusal of private complaint appended to this petition would indeed reveal that there is no assertion by complainant about having approached jurisdictional police station for registration of complaint and its refusal and any attempt to approach



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jurisdictional Superintendent of Police. Likewise, it would also indicate that complaint is not accompanied with affidavit containing material allegations against accused. Hon'ble Supreme Court in **Priyanka Srivastava's** case has in para 29 to 31 held as follows:

" 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)



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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."

7. That in **SN Vijayalakshmi and Ors. v. The State of Karnataka and Anr.** reported in **2025 SCC OnLine 1575** as well as **Anurag Bhatnagar and Anr. v. State (NCT of Delhi) and Anr.** reported in **2025 SCC Online SC 1514**, Hon'ble Supreme Court has reiterated that directions issued by Supreme Court in **Priyanka Srivstava's** case were mandatory. Therefore, non-compliance insofar as Section 154(3) of CrPC as well as non-filing of affidavit would be fatal. Consequently, other contentions that private complaint herein was filed as



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counter blast against proceedings initiated by accused against complainants herein under provisions of NI Act at Jodhpur, about requirement of reasons, assignment of detailed reasons, by learned Magistrate at time of taking cognizance would not be necessary. So also conclusion arrived at above is about non-conformity with procedural protection afforded to accused, there would be no need for this Court to examine manner of passing order or legality of order taking cognizance. Consequently, having due reference to ratio laid down in decisions relied upon by counsel for respondents, their utility in present case would be doubtful.

8. Therefore, relying on said decisions, petition succeeds, order dated 26.10.2018 passed by Additional Civil Judge and JMFC, Ramanagar, in PCR no.311/2018, taking cognizance of offence and registration of CC no.1014/2018, for offences punishable under Sections 403, 405, 406, 415, 418, 463, 464, 465 and 471 of IPC, stands quashed.

Sd/-
(RAVI V HOSMANI)
JUDGE

YKL
List No.: 1 Sl No.: 1