

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Writ Jurisdiction Case No.413 of 2015

Arising out of PS.Case No. 7421 Year 2014 Thana –Kowtali
District- PATNA

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1. Bipin Kumar Singh. S/o Babban Singh, Assistant Vice President (claims), HDFC ERGO General Insurance Company Ltd., Metro Tower, 10th Floor, 1 Ho Chi Minh Sarani, P.S.- Shakespeare Sarani, Kolkata, West Bengal.
2. Dipankar Ghosh. S/o Bhubaneshwar Ghosh, Manager (claims), HDFC ERGO General Insurance Company Ltd., Metro Tower, 10th Floor, 1 Ho Chi Minh Sarani, P.S.- Shakespeare Sarani, Kolkata, West Bengal.

.... Petitioner/s

Versus

1. The State of Bihar through the Director General of Police, Bihar, New Secretariat, Patna.
2. The Senior Superintendent of Police, Patna, Bihar.
3. The Officer-In-Charge, P.S.- Kotwali, District - Patna.
4. Sanjay Kumar son of Late Kedar Nath Prasad. Resident of Kedar Nath Kunj, Devi Asthan, Chiraiyataar, P.S.- Kankarbagh, District - Patna.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. N.K.Agrawal, Sr. Advocate
Mr. Saket Tiwary, Advocate

For the State : Mr. Ratnakar Ambastha, A.C. to G.P.-13

For the Complainant : Mr. Anshul Raj, Advocate

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CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH

ORAL JUDGMENT

Date: 21-01-2016

By way of the present application preferred under Articles 226 and 227 of the Constitution of India, the petitioners seek quashing of the first information report (for short “FIR”) of Kotwali P.S. Case No.742 of 2014

registered under Sections 406, 420, 506, 504 and 120B of the Indian Penal Code.

2. The facts of the case in brief are that respondent no.4 Sanjay Kumar (hereinafter referred to as “the complainant”) had filed Complaint Case No.28782 of 2014 in the court of the Chief Judicial Magistrate(for short “CJM”), Patna which was sent for investigation under Section 156(3) of the Code of Criminal Procedure (for short “CrPC”) to the Kotwali Police Station vide order dated 14.11.2014 and, accordingly, upon receipt of a copy of the complaint, a formal FIR was registered on 07.12.2014.

3. It has been alleged in the complaint petition that on being persuaded by one Samir Kumar, an agent of HDFC ERGO Insurance Company Limited (for short “the Company”), the complainant got his car insured with the Company on the payment of premium of Rs.12,150/- for a period commencing from 24.09.2013 to 23.09.2014. On 13.07.2014, the car of the complainant got damaged in an accident about which the complainant intimated to the Company and an SMS was also sent in this regard to the Company. Thereafter, the complainant took his car to the workshop, namely, N. Cars (for short “the firm”) situated at Rajendra Nagar, Patna for repair. After inspecting the damage done to the car, the firm intimated in writing that an estimated amount of Rs.43,134/- is required for its repair. The complainant sent a copy of the same to the company pursuant to which a Surveyor of the Company, namely, Shiv



Shankar Singh Suman inspected the vehicle and demanded Rs. 15,000/- as bribe in lieu of submitting the survey report. On protest made by the complainant, the said Surveyor told the complainant that he will act in a manner that the vehicle would be put to scrap. He also told him that part of the amount being demanded by him is also paid to the Branch Manager and the Circle Head of the Company. Thereafter, the complainant visited the office of the Company at Patna and intimated the accused persons about the hardships being faced by him, but they did not take any action. On 11.08.2014, he sent his written complaint to the office situated at Patna through registered post, but the accused persons refused to receive the same. On the basis of the aforesaid allegations, it has been alleged that the accused persons in conspiracy with each other induced the complainant to purchase an insurance policy in the name of providing insurance cover against loss or damage to the car of the complainant, but after purchase of the insurance policy, when the car got damaged in an accident, they demanded Rs.15,000/- in lieu of settling the estimated claim of Rs.43,134/- for repairing of the car.

4. It is further alleged in the complaint petition that on 29.08.2014, when the complainant visited the office of the Company, one Anuj Kumar, Circle Head and Shiv Shankar Singh Suman, Surveyor of the Company threatened him with dire consequences in case the complainant would visit the office again.

5. In the complaint petition, the Company, in question, its C.E.O.-cum-Managing Director, unknown Directors, the Branch Manager Abhisek Chatterjee, the Circle Head Anuj Kumar, the Manager Claims Deepankar Ghosh, the Assistant Vice President Bipin Singh and the Surveyor Shiv Shankar Singh Suman were made accused.

6. On the basis of the aforesaid complaint, Complaint Case No.28782(C) of 2014 was registered on 30th August, 2014. On 14.11.2014, an application was filed by the complainant praying therein to send the complaint to the police for investigation pursuant to which on the same day the learned CJM, Patna referred the said complaint filed under Section 200 of the CrPC to the Officer-in-Charge of the Kotwali Police Station for investigation under Section 156(3) CrPC. Accordingly, Kotwali P.S. Case No.742 of 2014 was registered on 07.12.2014 against all the eight accused named in the complaint including the Company under Sections 406, 420, 506, 504 and 120B of the Indian Penal Code. The endorsement made by the learned CJM on the complaint petition on 14.11.2014 reads as under:

“Copy of Complaint Case No.28782(C)/14 is forwarded to the Officer-in-Charge of Kotwali P.S., Patna through S.S.P. for investigation u/s 156(3) Cr.P.C.”

7. Mr. N.K.Agrawal, learned Senior Counsel for the petitioners assisted by Mr. Saket Tiwary, learned Counsel, has submitted that the



petitioners are senior executives of the Company and are working in the capacity of Assistant Vice President (claims) and Manager (claims) respectively and their office is situated at Kolkata. The Company has been incorporated under the Companies Act, 1956 and its registered office is situated at Mumbai in Maharashtra. He has submitted that the allegations made in the complaint would itself make it evident that the sole object of the complaint is to coerce the Company and its officials to extract money illegally. According to him, the allegations made in the FIR are false, baseless, frivolous and mala fide. As a matter of fact, when the complainant submitted the information of damage done to his car through SMS, it was duly acknowledged by the Company and a Surveyor was deputed to assess the loss. The vehicle was taken to the work shop of the firm by the complainant. It has been submitted that as per the terms and conditions of the insurance policy, after repairs, the accidental vehicle has to be inspected by the Surveyor and, only after such inspection, the Surveyor prepares a final report on which the claim is processed.

8. Mr. Agrawal, learned Senior Counsel has submitted that the complainant never presented his vehicle for inspection despite repeated requests made by the Company. The Company regularly wrote letters to the complainant asking him to submit the bill and money receipts of the repair and other documents so that the claim may be processed but the complainant never submitted any of the documents asked by the Company

nor he replied to the letters and instead of submitting documents, he has instituted the complaint leading to the institution of the present FIR only as an arm twisting method to compel the insurance company to admit the claim without documents. It has been further contended that the complainant wanted settlement of the claim only on the basis of rough estimate given by the firm for repair of his car.

9. According to him, the complainant has opted for institution of a criminal case only to cover up the deficiencies of his claim. He has submitted that the impugned order under section 156(3) of the CrPC has been passed mechanically without application of mind. He has further submitted that even otherwise, the disputes between the parties, are of civil nature as insurance is a contract and if the complainant was aggrieved in any manner due to non-settlement of his claim, he ought to have either resorted to a civil proceeding before a civil court or a complain before the consumer forum for the redressal of his grievance.

10. Mr. Agrawal, learned Senior Counsel has also submitted that the order dated 14.11.2014 passed by the learned CJM, Patna whereby the case was sent to the police for investigation is absolutely in contravention of the statutory provision and the law laid down by the Hon'ble Supreme Court in the matter of **Priyanka Srivastava and Another vs. State of Uttar Pradesh and Others reported in 2015(6) SCC 287.**



11. Per contra, Mr.Ratnakar Ambastha, learned Assistant Counsel to G.P.-13, has submitted that the application filed before the learned CJM, Patna under section 200 of the CrPC was a complaint in terms of the definition of complaint under section 2(g) of the CrPC. The claim made in the complaint discloses commission of a cognizable offence. The power to direct an investigation to the police authorities is available to the Magistrate both under Section 156(3) CrPC and under Section 202 CrPC. Hence, there is absolutely no illegality in the order dated 14.11.2014 passed by the learned CJM directing investigation under Section 156(3) CrPC pursuant to which the FIR has been instituted. He has submitted that prima facie the allegations made in the complaint have been found to be true even in course of investigation and since the investigation is going on this Court should be loath to quash the proceeding by invoking the jurisdiction under Article 226 of the Constitution till the investigation is complete and a report under Section 173 CrPC is filed.

12. Mr. Anshul Raj, learned counsel for the complainant has contended that the law laid down by the Hon'ble Supreme Court in the case of **Priyanka Srivastava and Another** (supra) would not be applicable to the facts of the present case. In the present case, initially, the complainant had not made any prayer for sending the complaint to the police for investigation under section 156(3) CrPC whereas in the case of **Priyanka Srivastava** (supra) the complaint itself was filed under Section



156 CrPC. In the present case, the complaint was filed under section 200 CrPC and the CJM, Patna, referred the same to the police under section 156(3) CrPC in his discretionary jurisdiction. He has further contended that the allegation of demand of bribe would certainly constitute a criminal offence and the contention that the dispute raised in the complaint petition would give rise to only a civil case is totally misconceived. However, learned counsel for the complainant fairly concedes that no specific allegation has been made against most of the accused persons named in the complaint which gave rise to institution of the FIR, but his submission is that since the claim of the petitioners is against the Company, the Company, its Directors and the office bearers are equally responsible for the mischief committed by the accused Shiv Shankar Singh Suman, Surveyor of the Company, who had demanded illegal gratification in lieu of settlement of the claim.

13. I have heard Mr. N.K.Agrawal, learned Senior Counsel assisted by the learned counsel Mr. Saket Tiwary for the petitioners, Mr. Ratnakar Ambastha, learned counsel for the State and Mr. Anshul Raj, learned counsel for the complainant and carefully perused the materials available on the record.

14. In view of the arguments advanced by the learned counsel for the parties, two issues arise for determination in the present case. The first issue is whether or not the CJM, Patna was justified in sending the

complaint to the police under section 156(3) CrPC and the second issue is whether or not the allegations leveled in the complaint would make out a criminal offence warranting investigation or the same are *mala fide* and devoid of any merit.

15. It is the contention of Mr. N.K.Agrawal, learned Senior Counsel for the petitioners, that powers vested in the Court under Section 156(3) of the CrPC can be exercised only when an officer-in-charge of the police station has refused to record information given by the informant disclosing commission of a cognizable offence and also despite being approached the Superintendent of Police, has failed to take appropriate action in the matter as provided for under section 154(3) of the CrPC.

16. In order to adjudicate the first issue, it would be appropriate to examine the relevant provisions of the CrPC. Chapter XII of the CrPC deals with the powers of the Police Officer to investigate a cognizable offence. It contains provisions relating to information to the police and their powers to investigate.

17. Section 154 of the CrPC under Chapter XII enables every person, who intends to report relating to commission of a cognizable offence to approach an officer-in-charge of a police station, who then is required to reduce such information in writing and to register an FIR, as provided for under Section 154(1) of the CrPC. However, if an officer-in-charge of a police station refuses to register an FIR, the person aggrieved



may send the substance of such information, in writing and by post, to the Superintendent of Police concerned who, if satisfied with such information discloses commission of a cognizable offence, shall either investigate the case himself or direct investigation made by any police officer subordinate to him in view of the provisions contained under Section 154 (3) of the CrPC. Once the FIR is registered, the criminal law is set in motion which would mean investigation under Section 156 of the CrPC till filing of the police report under Section 173 of the CrPC.

18. Section 156 under Chapter XII of the CrPC gives police officer powers to investigate cognizable offence in three situations. It reads as under:

“(1) Any officer in charge of a police station may, without the order of a Magistrate, investigate any cognizable case which a Court having jurisdiction over the local area within the limits of such station would have power to enquire into or try under the provisions of Chapter XIII.

(2) No proceeding of a police officer in such case shall at any stage be called in question on the ground that the case was one which such officer was not empowered under this section to investigate.

(3) Any Magistrate empowered under section 190 may order such an investigation as above- mentioned.”

19. Recently, the Hon’ble Supreme Court has considered the exercise of power by the Magistrate under Section 156(3) CrPC and issuance of direction by the Court in exercise of such power in the matter

of **Priyanka Srivastava** (supra) relied upon by the learned counsel for the petitioners. It has also considered the earlier decisions in this regard in paras 20 to 25, which read as under:

“20. The learned Magistrate, as we find, while exercising the power under Section 156 (3) Cr PC has narrated the allegations and, thereafter, without any application of mind, has passed an order to register an FIR for the offences mentioned in the application. The duty cast on the learned Magistrate, while exercising power under Section 156 (3) Cr PC, cannot be marginalized. To understand the real purport of the same, we think it apt to reproduce the said provision:

“156. Police officer’s power to investigate cognizable case.- (1) Any officer in charge of a Police Station may, without the order of a Magistrate, investigate any cognizable case which a Court having jurisdiction over the local area within the limits of such station would have power to inquire into or try under the provisions of Chapter XIII.

(2) No proceeding of a Police Officer in any such case shall at any stage be called in question on the ground that the case was one which such officer was not empowered under this section to investigate.

(3) Any Magistrate empowered under Section 190 may order such an investigation as abovementioned.”

21. Dealing with the nature of power exercised by the Magistrate under Section 156(3) CrPC, a three-Judge Bench in **Devarapalli Lakshminarayana Reddy v. V. Narayana Reddy (1976) 3 SCC 252**, had to express thus: **(SCC p. 258, para 17)**

“17. ... 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 charge-sheet under Section 173.”

22. In **Anil Kumar v. M K Aiyappa (2013) 10 SCC 705**, the two-Judge Bench had to say this: **(SCC p. 711,**

para 11)

“11. The scope of Section 156(3) CrPC came up for consideration before this Court in several cases. This Court in *Maksud Saiyed v. state of Gujarat* (2008) 5 SCC 668 examined the requirement of the application of mind by the Magistrate before exercising jurisdiction under Section 156 (3) and held that where jurisdiction is exercised on a complaint filed in terms of Section 156 (3) or Section 200 CrPC, the Magistrate is required to apply his mind, in such a case, the Special Judge/Magistrate cannot refer the matter under Section 156 (3) against a public servant without a valid sanction order. The application of mind by the Magistrate should be reflected in the order. The mere statement that he has gone through the complaint, documents and heard the complainant, as such, as reflected in the order, will not be sufficient. After going through the complaint, documents and hearing the complainant, what weighed with the Magistrate to order investigation under Section 156 (3) CrPC, should be reflected in the order, though a detailed expression of his views is neither required nor warranted. We have already extracted the order passed by the learned Special Judge which, in our view, has stated no reasons for ordering investigation.”

23. In ***Dilawar Singh v. State of Delhi*, (2007) 12 SCC 641**, this Court ruled thus: **(SCC p 647, para 18)**

18. ...‘11. The clear position therefore is that any Judicial Magistrate, before taking cognizance of the offence, can order investigation under Section 156 (3) of the Code. If he does so, he is not to examine the complainant on oath because he was not taking cognizance of any offence therein. For the purpose of enabling the police to start investigation it is open to the Magistrate to direct the police to register an FIR. There is nothing illegal in doing so. After all registration of an FIR involves only the process of entering the substance of the information relating to the commission of the cognizable offence in a book kept by the officer in charge of the police station as indicated in Section 154 of the Code. Even if a Magistrate does not say in so many words while directing investigation under Section 156 (3) of the Code that an FIR should be registered, it is the duty of the officer in charge of the police station to register the FIR regarding the cognizable offence

disclosed by the complainant because that police officer could take further steps contemplated in Chapter XII of the Code only thereafter.”

24. In **CREF Finance Ltd. v. Shree Shanthi Homes (P) Ltd., (2005) 7 SCC 467**, the Court while dealing with the power of the Magistrate taking cognizance of the offences, has opined that having considered the complaint, the Magistrate may consider it appropriate to send the complaint to the police for investigation under Section 156 (3) of the Code of Criminal Procedure. And again: (Madhao v. State of Maharashtra, (2013) 5 SCC 615, SCC pp. 620-21, para 18).

“18. When a Magistrate receives a complaint he is not bound to take cognizance if the facts alleged in the complaint disclose the commission of an offence. The Magistrate has discretion in the matter. If on a reading of the complaint, he finds that the allegations therein disclose a cognizable offence and the forwarding of the complaint to the police for investigation under Section 156 (3) will be conducive to justice and save the valuable time of the Magistrate from being wasted in enquiring into a matter which was primarily the duty of the police to investigate, he will be justified in adopting that course as an alternative to taking cognizance of the offence itself. As said earlier, 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). 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).”

25. Recently, in **Ramdev Food Products (P) Ltd v. State of Gujarat, (2015) 6 SCC 439**, while dealing with the exercise of power under section 156(3) CrPC by the learned Magistrate, a three-Judge Bench has held that: (SCC p. 456, para 22)

“22.1. The direction under Section 156(3) is to be issued, only after application of mind by the Magistrate. When the Magistrate does not take cognizance and does not find it necessary to postpone the instance of process and finds a case made out to proceed forthwith, direction

under the said provision is issued. In other words, where on account of credibility of information available, or weighing the interest of justice it is considered appropriate to straightaway direct investigation, such a direction is issued.

22.2. The cases where Magistrate takes cognizance and postpones issuance of process are cases where the Magistrate has yet to determine “existence of sufficient ground to proceed”. Category of cases falling under para 120.6 in *Lalita Kumari vs. State of U.P.* (2014) 2 SCC 1.

22.3. Subject to these broad guidelines available from the scheme of the Code, exercise of discretion by the Magistrate is guided by interest of justice from case to case.”

20. After analyzing the statutory provisions of the CrPC and the earlier decisions of the Hon’ble Supreme Court as stated hereinabove, the Bench observed in paras 27 to 31 as under:

“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 Institution 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 lodged 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 Superintendent of Police concerned.

29. At this stage it is seemly to state that power under Section 156 (3) CrPC 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 can not 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 frame work of the said Act or under Article 226 of the Constitution of India. But it can not be done to take undue advantage in a criminal court as if some body 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 the allegations of the case. We are compelled to say so as a number of cases pertaining to fiscal sphere, matrimonial dispute/ family dispute, commercial offences, medical negligence cases, corruption cases and the cases where there is abnormal delay/laches in initiating criminal prosecution, as are illustrated in *Lalit Kumari vs. State of U.P.*, (2014) 2 SCC I are being filed. That apart, the learned Magistrate would also be aware of the delay in lodging of the FIR.”

21. The Hon'ble Supreme Court in the matter of **Priyanka Srivastava** (Supra) clearly held that there has to be prior application under Section 154(1) and 154(3) CrPC while filing a petition under Section 156(3) CrPC and both these aspects must be spelt out in the application and necessary documents to that effect must be filed.

22. It would appear from the record that when the complaint was filed by the complainant in the court of CJM, Patna on 30.08.2014, he simply kept the same on record and on 14.11.2014 when the complainant filed an application for referring the complaint to the police under Section 156(3) CrPC, he endorsed the same to the SHO Kotwali Police Station for investigation without looking into the nature of allegations and without application of judicial mind.

23. In view of the law laid down by the Hon'ble Supreme Court in the matter of **Priyanka Srivastava** (supra), before passing the order under Section 156(3) CrPC it was incumbent upon the learned CJM to ensure that before coming to the Court, the complainant did approach the officer-in-charge of the police station for recording the information disclosing commission of a cognizable offence and on refusal to register FIR, the complainant sent the substance of such information in writing and by post to the Superintendent of Police under Section 154(3) CrPC. A duty is also cast upon the Magistrate to apply his judicial mind at the time of exercise of power under Section 156(3) CrPC and only a principled and

really grieved citizen with clean hands should be allowed to invoke such power.

24. In the present case, admitted position is that before filing the complaint, the complainant did not take any action either under Section 154(1) or under Section 154(3) CrPC. It would also be evident from the record that the complaint was referred to the police under Section 156(3) CrPC on mere asking of the complainant, who had certainly not approached the Court with clean hands, as the Company and its senior executives, who were not concerned in any manner, have unnecessarily been made accused in the complaint petition. There is no distinguishing feature in the present case and the law laid down by the Hon'ble Supreme Court in the matter of **Priyanka Srivastava** (supra) is fully applicable in the present case. Hence, for the reasons recorded hereinabove sending the complaint to the police under Section 156(3) CrPC by the learned CJM, Patna was not justified at all.

25. Coming to the second question, I do not think it necessary to narrate or repeat the allegations made in the complaint which has already been noticed above. Admittedly, the petitioners are senior executives of the Company incorporated under the Indian Companies Act, 1956. Their office is situated at Kolkata and the complainant had never ever met them. There is no whisper against the petitioners in the entire complaint. Apparently, the complainant has impleaded them as also the Managing Director-cum-

C.E.O., the Assistant Vice President and the Directors of the Company as accused without their being any imputation against them just in order to bring them on their knees.

26. The complainant is aggrieved mainly due to non-settlement of his insurance claim. Even if, the said allegation is found to be true, the same would amount to deficiency in service, which can be redressed either by approaching the consumer forum or a civil court. In my considered opinion, even of merits, a civil dispute has been given a color of criminal case by mere ornamentation. The only purpose appears to be an attempt to harass the accused persons including the petitioners to blackmail and compel them to admit the insurance claim.

27. In the matter of **Indian Oil Corporation vs. NEPC India Ltd. and Others reported in (2006) 6 SCC 736**, referring to the growing tendency in business circle to convert purely civil disputes into criminal cases, the Hon'ble Supreme Court has held in paragraphs 13 and 14 as under:

“13. While on this issue, it is necessary to take notice of a growing tendency in business circles to convert purely civil disputes into criminal cases. This is obviously on account of a prevalent impression that civil law remedies are time consuming and do not adequately protect the interests of lenders/creditors. Such a tendency is seen in several family disputes also, leading to irretrievable break down of marriages/families. There is also an impression that if a person could somehow be entangled in a criminal prosecution, there is a

likelihood of imminent settlement. Any effort to settle civil disputes and claims, which do not involve any criminal offence, by applying pressure through criminal prosecution should be deprecated and discouraged. In *G. Sagar Suri vs. State of UP* [2000 (2) SCC 636], this Court observed :

"It is to be seen if a matter, which is essentially of a civil nature, has been given a cloak of criminal offence. Criminal proceedings are not a short cut of other remedies available in law. Before issuing process a criminal court has to exercise a great deal of caution. For the accused it is a serious matter. This Court has laid certain principles on the basis of which the High Court is to exercise its jurisdiction under Section 482 of the Code. Jurisdiction under this Section has to be exercised to prevent abuse of the process of any court or otherwise to secure the ends of justice."

14. While no one with a legitimate cause or grievance should be prevented from seeking remedies available in criminal law, a complainant who initiates or persists with a prosecution, being fully aware that the criminal proceedings are unwarranted and his remedy lies only in civil law, should himself be made accountable, at the end of such misconceived criminal proceedings, in accordance with law. One positive step that can be taken by the courts, to curb unnecessary prosecutions and harassment of innocent parties, is to exercise their power under section 250 Cr.P.C. more frequently, where they discern malice or frivolousness or ulterior motives on the part of the complainant. Be that as it may."

28. In the matter of **Zandu Pharmaceutical Works Ltd. and Others vs. Mohd. Sharaful Haque and Another** reported in (2005) 1

SCC 122, the Hon'ble Supreme Court has observed in para 8 as under:

“8. It would be an abuse of process of the court to allow any action which would result in injustice and prevent promotion of justice. In exercise of powers, court would be justified to quash any proceeding if it finds that initiation/continuance of it amounts to abuse of the process of court or quashing of these proceedings would otherwise serve the ends of justice. When no offence is disclosed by the complaint, the court may examine the question of fact. When a complaint is sought to be quashed, it is permissible to look into the materials to assess what the complainant has alleged and whether any offence is made out even if the allegations are accepted in toto.”

29. In the matter of **State of Karnataka vs. L Muniswamy & Ors. [(1977) 2 SCC 699]**, the Hon'ble Supreme Court has observed that the wholesome power under Section 482 CrPC to quash a proceeding if it comes to the conclusion that allowing the proceeding to continue would be an abuse of the process of the Court or that the ends of justice require that the proceedings ought to be quashed. The saving of the High Court's inherent powers, both in civil and criminal matters is designed to achieve a salutary public purpose which is that a court proceeding ought not to be permitted to degenerate into a weapon of harassment or persecution. In a criminal case, the veiled object behind a lame prosecution, the very nature of the material on which the structure of the prosecution rests and the like would justify the High Court in quashing the proceeding in the interest of justice. The ends of justice are higher than the ends of mere law though

justice has not to be administered according to laws made by the Legislature. It held in para 7 as under:-

“7. The second limb of Mr. Mookerjee’s argument is that in any event the High Court could not take upon itself the task of assessing or appreciating the weight of material on the record in order to find whether any charges could be legitimately framed against the respondents. So long as there is some material on the record to connect the accused with the crime, says the learned counsel, the case must go on and the High Court has no jurisdiction to put a precipitate or premature end to the proceedings on the belief that the prosecution is not likely to succeed. This, in our opinion, is too broad a proposition to accept. Section 227 of the Code of Criminal Procedure, 2 of 1974, provides that:-

If, upon consideration of the record of the case and the documents submitted therewith, and after hearing the submissions of the accused and the prosecution in this behalf, the Judge considers that there is not sufficient ground for proceeding against the accused, he shall discharge the accused and record his reasons for so doing.

This Section is contained in Chapter XVIII called “Trial Before a Court of Session”. It is clear from the provision that the Sessions Court has the power to discharge an accused if after perusing the record and hearing the parties he comes to the conclusion, for reasons to be recorded, that there is not sufficient ground for proceeding against the accused. The object of the provision which requires the Sessions Judge to record his reasons is to enable the superior court to examine the correctness of the reasons for which the Sessions Judge has held that there is or is not sufficient ground for proceeding against the accused. The High Court therefore is entitled to go into the reasons given by the Sessions Judge in support of his order and to determine for itself whether the order is justified by the facts and circumstances of the case. Section 482 of the new Code, which corresponds to Section 561-A of the Code of 1898, Provides that:

Nothing in this Code shall be deemed to limit or

affect the inherent powers of the High Court to make such orders as may be necessary to give effect to any order under this Code or to prevent abuse of the process of any Court or otherwise to secure the ends of justice.

In the exercise of this wholesome power, the High Court is entitled to quash a proceeding if it comes to the conclusion that allowing the proceeding to continue would be an abuse of the process of the Court or that the ends of justice require that the proceedings ought to be quashed. The saving of the High Court's inherent powers, both in civil and criminal matters, is designed to achieve a salutary public purpose which is that a court proceeding ought not to be permitted to degenerate into a weapon of harassment or persecution. In a criminal case, the veiled object behind a lame prosecution, the very nature of the material on which the structure of the prosecution rests and the like would justify the High Court in quashing the proceeding in the interest of justice. The ends of justice are higher than the ends of mere law though justice has got to be administered according to laws made by the Legislature. The compelling necessity for making these observations is that without a proper realisation of the object and purpose of the provision which seeks to save the inherent powers of the High Court to do justice between the State and its subjects it would be impossible to appreciate the width and contours of that salient jurisdiction."

30. In the matter of G. Sagar Suri and Another vs. State of U.P. and Others reported in 2000(2) SCC 636, the Hon'ble Supreme Court observed in para 8 as under:

"8. Jurisdiction under Section 482 of the Code has to be exercised with great care. In exercise of its jurisdiction the High Court is not to examine the matter superficially. It is to be seen if a matter, which is essentially of a civil nature, has been given a cloak of criminal offence. Criminal proceedings are not a short cut of other remedies available in law. Before issuing process a criminal court has to exercise a great deal of

caution. For the accused it is a serious matter. This Court has laid certain principles on the basis of which the High Court is to exercise its jurisdiction under Section 482 of the Code. Jurisdiction under this Section has to be exercised to prevent abuse of the process of any court or otherwise to secure the ends of justice.”

31. On the facts of the present case as also on the principles laid down by the Hon’ble Supreme Court, I am of the opinion that filing of the complaint itself was mala fide and unwarranted. The remedy of the complainant lies only in civil law and institution of the criminal case is nothing, but an abuse of the process of the Court.

32. In the matter of **State of Haryana and Others vs. Bhajan Lal and Others** reported in **1992 Suppl.(1) SCC 335**, the Hon’ble Supreme Court has laid down the principles on which the court can quash the criminal proceedings under Article 226 of the Constitution of India or under section 482 CrPC. These are as under:

“**102.** In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extra-ordinary power under Article 226 or the inherent powers Under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any Court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.

(1) Where the allegations made in the First Information Report or the complaint, even if they

are taken at their face value and accepted in their entirety do not prima-facie constitute any offence or make out a case against the accused.

(2) Where the allegations in the First Information Report and other materials, if any, accompanying the F.I.R. do not disclose a cognizable offence, justifying an investigation by police officers Under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

(4) Where, the allegations in the F.I.R. do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the

accused and with a view to spite him due to private and personal grudge.”

33. In my opinion, the principles no. (3) (5) (6) and (7) are clearly attracted in the present case. In that view of the matter, I am satisfied that the order dated 14.11.2014 directing investigation into the complaint in this case and the FIR registered pursuant thereto bearing Kotwali P.S. Case No.742 of 2014 dated 7.12.2014 amount to abusing the process of the Court and thus, are liable to be quashed.

34. Accordingly, the order dated 14.11.2014 passed by the learned CJM, Patna and the FIR of Kotwali P.S. Case No.742 of 2014 dated 07.12.2014, are hereby quashed.

35. The application stands allowed.

(Ashwani Kumar Singh, J.)

Md.S./-

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