IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO. 437 OF 2010

1. Mr Rajan Kalia,
Age: 39 years, Occu: EVP & Head-HR
Max New York Life Insurance Co. Ltd.,
11th Floor, DLF Square
Jacaranda Marg, DLF City, Phase-II,
Gurgaon 122002

2. Mr Rajesh Sud,
Age: 40 years, Occu: Managing Director & CEO
Max New York Life Insurance Co. Ltd.,
11th Floor, DLF Square
Jacaranda Marg, DLF City, Phase-II,
Gurgaon 122002 ..PETITIONERS

VERSUS

1. The State of Maharashtra

2. Sapankumar P. Satyanarayan Rathi,
Age : 31 years,
R/o. New Bazaar, Jalna,
Tehsil & Dist. Jalna ..RESPONDENTS

WITH
CRIMINAL WRIT PETITION NO. 505 OF 2010

1. Mr Analjit Singh,
Age: 56 years, Occu: Chairman,
Max New York Life Insurance Co. Ltd.,
11th Floor, DLF Square
Jacaranda Marg, DLF City, Phase-II,
Gurgaon 122002

2. Mr Anuroop Singh
Age: 56 years, Occu: Vice Chairman,
Max New York Life Insurance Co. Ltd.,
11th Floor, DLF Square
Jacaranda Marg, DLF City, Phase-II,
Gurgaon 122002

3. Mr Rajit Mehta,
Age: 48 years, Occu: Executive Director & COO,
Max New York Life Insurance Co. Ltd.,
11th Floor, DLF Square
Jacaranda Marg, DLF City, Phase-II,
Gurgaon 122002

4. Mr Richard Mucci,
R/o New York,
Age: 59 years, Occu: Director,
Max New York Life Insurance Co. Ltd.,
11th Floor, DLF Square
Jacaranda Marg, DLF City, Phase-II,
Gurgaon 122002

5. Mr William Beaty,
R/o New York,
Age: 63 years, Occu: Director,
Max New York Life Insurance Co. Ltd.,
11th Floor, DLF Square
Jacaranda Marg, DLF City, Phase-II,
Gurgaon 122002

6. Ms Marielle Theron,
R/o Switzerland,
Age: 48 years, Occu: Director,
Max New York Life Insurance Co. Ltd.,
11th Floor, DLF Square
Jacaranda Marg, DLF City, Phase-II,
Gurgaon 122002

7. Mr Leo Puri,
Age: 49 years, Occu: Director,
Max New York Life Insurance Co. Ltd.,
11th Floor, DLF Square
Jacaranda Marg, DLF City, Phase-II,
Gurgaon 122002

8. Dr. Omkar Goswami,
Age: 53 years, Occu: Director,
Max New York Life Insurance Co. Ltd.,
11th Floor, DLF Square
Jacaranda Marg, DLF City, Phase-II,
Gurgaon 122002

9. Mr Rajesh Khanna,
Age: 49 years, Occu: Director,
Max New York Life Insurance Co. Ltd.,
11th Floor, DLF Square
Jacaranda Marg, DLF City, Phase-II,
Gurgaon 122002
..PETITIONERS

VERSUS

1. The State of Maharashtra

2. Sapankumar P. Satyanarayan Rathi,
Age : 31 years,
R/o. New Bazaar, Jalna,
Tehsil & Dist. Jalna ..RESPONDENTS

Mr Shirish Gupte, Senior Advocate along with Mr Sanjay Udeshi, instructed by Mrs Chaitali Kutti, Advocate for petitioners;
Mr D. V. Tele, Addl. Public Prosecutor for respondent No. 1;
Mr R. F. Totala along with Mr Rahul Totala, Advocates for respondent No. 2

CORAM : N.W. SAMBRE, J.

DATE : 31st March, 2016

ORAL JUDGMENT :

Heard Mr Shirish Gupte, learned Senior Counsel, assisted by Mr Sanjay Udeshi, instructed by Mrs Chaitali Kutti on behalf of the petitioners; Mr Tele, learned Addl. Public Prosecutor on behalf of respondent no.1 and learned Counsel Mr R.F. Totala, assisted by Mr Rahul Totala on behalf of respondent no.2.

2. By way of present petitions, the petitioners – original accused have questioned the complaint filed by respondent no.2 herein bearing Misc. Application No.151 of 2010, filed before learned Chief Judicial Magistrate,

Jalna and impugned order dated 1st April, 2010, passed by learned Chief Judicial Magistrate directing the police officer to investigate into the matter under section 156 (3) of the Code of Criminal Procedure (for short "Cr.P.C.") and submit charge-sheet or report on or before 22nd April, 2010 and consequential first information report, dated 1st April, 2010 registered with Sadar Bazar police station, Jalna.

3. The petitioners claim to be Executives of Max New York Life Insurance Co. Ltd., who are proceeded against under section 156 (3) of Cr.P.C., pursuant to a complaint initiated by respondent no.2 to the present proceedings.

4. In the said proceedings, the learned Magistrate, as observed herein above, has initiated process and directed the Police Inspector, Sadar Bazar police station to investigate into the matter under section 156 (3) of the Cr.P.C. and submit charge-sheet or report on or before 22nd April, 2010, by an order dated 1st April, 2010. Pursuant to the said order, C.R. No.3 of 2010 came to be registered for offences punishable under sections 469, 471, 504, 506, 323 read with section 34 of the Indian Penal Code.

5. It is claimed by the complainant in his complaint that he joined company on 13th September, 2008 as a Sales Manager and was loyal to his duties. According to him, the petitioners, after six months of his appointment, have conferred on him status of a permanent employee. He then claimed that though he had never resigned from the office of the said

company, still he was required to suffer false allegations at the behest of the petitioners-accused and accused no.4 refused to pay his salary and also issued threats. It is then claimed that rest of the accused except petitioner – accused no.4 in Criminal Writ Petition No.505 of 2010, are owners of the company and working of the branch in which he was employed, was carried out as per the instructions of the accused – owners of the company.

6. Mr Gupte, learned Senior Counsel, while challenging the legality and validity of the complaint in question and the order of issuance of process, would urge that the learned Magistrate has passed an order contrary to the scheme of section 156 (3) of the Cr.P.C. He would then submit that the Magistrate, without any reasons and satisfying himself whether the ingredients to constitute offences complained of, have been made out, has straight-away ordered issuance of process. According to him, in fact, the complaint itself is not maintainable in absence of any mens rea. The matter at the most could be arising out of contract of employment which is a service dispute.

7. Mr Gupte, learned Senior Counsel places reliance upon the judgment of the Apex Court in the matter of **Priyanka Srivastava & anr. vs. State of Uttar Pradesh & ors**., reported in **(2015) 6 SCC 287**, so as to canvass that while exercising the powers under section 156 (3), the Magistrate must apply his mind and order registration of first information report only upon satisfying himself that the ingredients to constitute the

offences complained of have been made out. He then claims that the Magistrate in present case was not vigilant, having regard to the allegations and approach of the complainant in the case in question and *prima facie* it would be inferred that the order is without application of mind. He has sought to place reliance upon the observations made in paragraphs 27 to 31 of the said judgment. In addition, he would place reliance upon the judgment of the Apex Court, in the matter of **Maksud Saiyed vs. State of Gujarat & ors.**, reported in **(2008) 5 SCC 668**, so as to substantiate the above referred contentions.

8. While opposing the proceedings, Mr Totala, learned Counsel appearing on behalf of respondent no.2 – complainant would invite attention of this Court to the fact that once the Court has ordered issuance of process, the petitions are premature as the police report may absolve the petitioners of the allegations made in the complaint or the Magistrate himself, upon consideration of such report, may discharge them from the complaint. He would then submit that at the behest of the petitioners, the investigation in the matter cannot be arrested or stalled and as such sought dismissal of the petitions.

9. With the assistance of respective Counsel, I have perused the contents of the complaint so also the order dated 1st April, 2010, passed by the learned Magistrate directing the police officer to investigate the matter under section 156 (3) of the Cr.P.C. and submit charge-sheet or report.

10. From two lines order, it could easily be inferred from the contents of the order that the learned Magistrate has failed to apply his mind to the entire gamut of the matter brought before him by the complainant.

11. It is then required to be noted that the learned Magistrate, while directing investigation into the matter, has lost sight of the legal position, that the order must reflect application of mind and satisfaction of the making out of the ingredients of the sections under which the petitioners-accused have been alleged to have committed the crime, as has been claimed by the complainant. Bare perusal of the impugned order depicts that it is as cryptic as it could be and lacks application of mind. No reasons are recorded for reaching to the conclusion for ordering investigation in the matter, in exercise of powers under section 156 (3) of the Cr.P.C. Appropriate reliance can be placed upon the judgment in the matter of Priyanka Srivastava (supra), particularly paragraphs 28 and 31 to 35, which read thus :-

> *"28. Issuing a direction stating "as per the application" to lodge an FIR creates a very unhealthy situation in society and also reflects the erroneous approach of the learned Magistrate. It also encourages the 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 the Respondent 3 to harass the Appellants with the sole intent to avoid the payment of loan. When a citizen avails a loan from a financial institution, it is his obligation to pay back and not play truant or for that matter play possum. As we have noticed, he has been able to do such adventurous acts as he has the embedded conviction that he will not be taken to task because an application under Section 156(3) CrPC is a simple application to the court for issue of a direction to the investigating agency. We have been apprised that a carbon copy of a document is filed to show the compliance with Section 154(3), indicating it has been sent to the Superintendent of police concerned.

31. We have already indicated that there has to be prior applications under Section 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 the 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.

32. The present lis can be perceived from another angle. We are slightly surprised that the financial institution has been compelled to settle the dispute and we are also disposed to think that it has so happened because the complaint cases were filed. Such a situation should not happen.

33. At this juncture, we may fruitfully refer to Section 32 of the SARFAESI Act, which reads as follows:

"32. Protection of action taken in good faith.- No suit, prosecution or other legal proceedings shall lie against any secured creditor or any of his officers or manager exercising any of the rights of the secured creditor or borrower for anything done or omitted to be done in good faith under this Act."

In the present case, we are obligated to say that learned Magistrate should have kept himself alive to the aforesaid provision before venturing into directing registration of the FIR under Section 156(3) CrPC. It is because Parliament in its wisdom has made such a provision to protect the secured creditors or any of its officers, and needles to emphasize, the legislative mandate has to be kept in mind.

> *34. In view of the aforesaid analysis, we allow the appeal, set aside the order passed by the High Court and quash the registration of the FIR in case Crime No. 298 of 2011, registered with Police Station, Bhelupur, District Varanasi, U.P.*
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> *35. A copy of the order passed by us be sent to the learned Chief Justices of all the High Courts by the Registry of this Court so that the High Courts would circulate the same amongst the learned Sessions Judges who, in turn, shall circulate it among the learned Magistrates so that they can remain more vigilant and diligent while exercising the power under Section 156(3) CrPC.*"

12. It is then required to be noted that once the Magistrate directs an investigation into the matter, what is contemplated is registration of crime against the petitioners and then only a police officer gets an authority to investigate the matter. While setting up criminal law in motion, in my opinion, the Magistrate cannot have casual approach but he should be vigilant while bringing before the Court accused persons who are required to stand to the trial as per criminal law.

13. It appears that the Magistrate has lost sight of even the above referred principles which are necessary to be observed while setting the criminal law in motion.

14. As such, without going into merits of the matter and dwelling upon the contentions of the either side, *in extenso* and having noted that the order passed by the Magistrate suffers from non application of mind, the same is not sustainable and stands vitiated.

15. In the result, criminal writ petitions partly succeed. I, therefore, pass following order :-

The order dated 1st April, 2010, passed by Chief Judicial Magistrate, Jalna, in Misc. Application No.151 of 2010, is hereby set aside.

Learned Chief Judicial Magistrate, Jalna is directed to pass an order afresh after hearing the complainant in the light of the scheme of section 156 (3) of the Cr.P.C. and having regard to the observations made herein above.

Criminal Writ Petitions stand partly allowed. Rule made absolute in above terms.

(N.W. SAMBRE, J.)

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