

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.17247 of 2017

Arising Out of PS.Case No. -17 Year- 2017 Thana -PATAHI District- EAST CHAMPARAN
(MOTIHARI)

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1. Chandra Kishor Kumar Son of Late Narad Kumar
 2. Asha Singh Wife of Chandra Kishor Kumar
 3. Bhola Kumar Son of Late Narad Kumar
 4. Sujay Kumar Son of Shankar Kumar @ Shankar Kuer
 5. Ram Pravesh Raut Son of Faguni Raut All are residents of Village - Barka Balua, P.S. - Patahi, District - East Champaran.
 6. Mukesh Kumar Sinha s/o Late Bindeshwar Prasad Sinha Ex. Branch Manager, Central Co- operative Bank, Pakridayal, East Champaran.
 7. Chandrika Tiwari S/o Late Durga Tiwari Ex. Branch Manager, Central Co- operative Bank, East Champaran.

.... Petitioner/s

Versus

1. The State of Bihar
2. Birendra Ram, son of Nathuni Ram, Resident of Village- Barka Balua, P.S.- Patahi, District- East Champaran.

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Sanjeev Kumar, Adv.
Mr. Binod Kumar, Adv.
For the Opposite Party No.2 : Mr. Md. Anix Akhtar, Adv.
Mr. Arif Daulasiddiqui, Adv.

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CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH

ORAL JUDGMENT

Date: 04-12-2017

This application under Section 482 of the Code of Criminal Procedure has been filed by the petitioners for quashing the FIR of Patahi P.S. Case No. 17 of 2017 arising out of Complaint Case No. 03 of 2016 registered under Sections 406, 409, 420, 467, 468, 471, 504 and 120-B of the Indian Penal Code and Section 3(1)(x) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act.



2. It is submitted by the learned counsel for the petitioners that initially a complaint was filed, which was referred to the police under sub-section (3) of Section 156 of the Code of Criminal Procedure (for short 'Cr.P.C.') for investigation pursuant to request made by the complainant and, on the basis of the order of the learned Magistrate, the First Information Report has been instituted. He submitted that the complaint in question is malicious in nature and the institution of the FIR is clearly in violation to the ratio laid down by the Supreme Court in *Priyanka Srivastava & Anr. Vs. State of U.P. [(2015) 6 SCC 287]*. He submitted that the complainant opposite party no.2 along with one Ramadhar Sah and Raj Kishore Sah and others have formed a group and they are deeply interested in the Mahmada wali Primary Agriculture Credit Co-operative Society Limited (for short 'PACCS'). There is issue of misappropriation of crop insurance fund and the matter ultimately was examined pursuant to hue and cry raised in the assembly. Initial report, as contained in Annexure-2 to this petition, would make it manifest that no irregularity in distribution of insurance money was found. He contended that the petitioners had lodged Patahi P.S. Case No. 148 of 2016 on 09.11.2016 in which Ramadhar Sah and Raj Kishore Sah, who are witnesses in the present case, were made accused, which had been instituted on 24.11.2016.



3. Per contra, learned counsel appearing for the complainant-opposite party no.2 submitted that during financial year 2007-08 and 2008-09 huge amount has been misappropriated in the name of crop insurance by the accused petitioners by fabricating false and forged land possession certificate. He submitted that the allegations made in the complaint on the basis of which FIR has been instituted would attract ingredients of the offences alleged and the learned Magistrate acted well within the jurisdiction in referring the complaint to the police for investigation pursuant to which FIR has been instituted. He contended that the application filed by the petitioners is pre-mature as the matter is under investigation by the police.

4. Despite valid service of notice, learned counsel for the State did not appear to contest the matter.

5. I have heard learned counsel for the petitioners and learned counsel for the opposite party no.2.

6. The facts giving rise to the present application are that the opposite party no.2 lodged Complaint Case No. 03 of 2016 on 24.11.2016 in the court of Chief Judicial Magistrate, Motihari, East Champaran alleging therein inter alia that during financial year 2007-08 and 2008-09 huge amount had been misappropriated in the name of crop insurance by the accused petitioners by fabricating false and



forged land possession certificate. It is further alleged that the PACCS Chairmen, Bank Managers and their associates are involved in misappropriation of crop insurance money as they have withdrawn money by getting insured the crop under Crop Insurance Policy by putting false signature of the farmers. It is also alleged that when the complainant came to know about the alleged fraudulent act of the accused petitioners and raised protest, the petitioners extended threats of dire consequences, abused him by calling his caste name and assaulted him too with kicks and shoes.

7. It would be pertinent to note here that the opposite party no.2 stated in the complaint that an information in this regard was given to the Officer-in-Charge of Patahi Police Station, but the Officer-in-Charge, being in collusion with the accused persons, did not institute the FIR and suggested the complainant to file complaint in the court. From a reading of the prayer portion of the complaint, it would be evident that the complainant made a request to the court to send the complaint to the police for investigation in terms of sub-section (3) of Section 156 of the Cr.P.C.

8. It is on the basis of request made by the opposite party no.2 that the learned Magistrate, vide order dated 30.01.2017, referred the complaint to the police for investigation in exercise of powers conferred under sub-section (3) of Section 156 of the Cr.P.C.



pursuant to which Patahi P.S.Case No. 17 of 2017 was registered on 03.02.2017 for the offences under the various Sections of the Penal Code and Section 3(1)(x) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act.

9. Section 156(3) of the Cr.P.C. confers power on a Magistrate empowered to take cognizance under Section 190 of the Cr.P.C. to order investigation into any cognizable offence.

10. In **Priyanka Srivastava**'s case, the supreme Court deprecated the practice of allowing the grieved and disgruntled persons to invoke the provisions of Section 156(3) of the Cr.P.C. by unjustified vexatious prosecution. It laid down a detailed guideline on this crucial issue under Section 156(3) of the Cr.P.C. It observed :-

“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 fellows citizens, efforts are to be made to scuttle and curb the same.”

11. It further observed :-

“In our considered opinion, a stage has come in this



country where Section 156(3) Cr.P.C. 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 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. 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 application under Section 156(3) be supported by an affidavit 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.”

12. Thus, the guidelines issued by the Supreme Court in ***Priyanka Srivastava*** (Supra) can be summarized as under :-

- (a) The Magistrate has to remain vigilant with regard to the allegations made and the nature of allegations and not to issue directions without application of mind;
- (b) The Magistrate shall bear in mind that sending the matter would be conducive to justice and then he may pass the requisite order;
- (c) The power conferred under Section 156(3) of the Cr.P.C. warrants application of judicial mind as the court of law is involved and it is not the police taking steps at the stage of Section 154 of the Cr.P.C. ;



- (d) The complainant at his own whim and fancy cannot invoke authority of the Magistrate under Section 156(3) of the Cr.P.C.;
- (e) A principled and really grieved citizen with clean hands must have free access to invoke the said power as it protects the citizens but when pervert litigations takes this route to harass their fellows citizens, efforts are to be made to scuttle and curb the same;
- (f) In appropriate case, the Magistrate shall be required to verify the truth and also to verify the veracity of the allegations as the power under Section 156(3) of the Cr.P.C. is invoked in a routine manner without taking any responsibility whatsoever only to harass certain persons, an affidavit can make the complainant more responsible. If the affidavit is found to be false, he will be liable for prosecution in accordance with law, which would deter him to casually invoke the authority of the Magistrate under Section 156(3) of the Cr.P.C.);
- (g) Due to the rising trend of filing of frivolous complaints,, a stage has come where Section 156(3) Cr.P.C. applications are to be supported by an affidavit duly sworn by the applicant, who seeks the invocation of the



jurisdiction of the Magistrate;

- (h) In 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 are being filed by pervert litigants to harass the fellow citizens.

13. In the instant case, admittedly the complaint was filed by the opposite party no.2 without filing any affidavit to the effect that prior to filing of the complaint steps were taken for institution of the FIR under Section 154 of the Cr.P.C. The learned Magistrate mechanically referred the complaint to the police for investigation under Section 156(3) of the Cr.P.C. on mere asking of the complainant without taking into consideration as to whether the same would be conducive to justice.

14. Having regard to the discussions made above, in view of the ratio laid down by the Supreme Court in *Priyanka Srivastava* (Supra), I am of the opinion that institution of the FIR upon the order passed by the learned Magistrate in exercise of power conferred under Section 156(3) of the Cr.P.C. is bad in law.

15. Resultantly, the impugned order dated 30.01.2017 passed by the learned Chief Judicial Magistrate, Motihari, East



Champan in Complaint Case No.03 of 2016 and the FIR of Patahi
P.S.Case No. 17 of 2017 and its investigation are hereby quashed.

16. The application stands allowed.

(Ashwani Kumar Singh, J)

Pradeep/-

AFR/NAFR	NAFR
CAV DATE	N.A.
Uploading Date	07-12-2017
Transmission Date	07-12-2017

