

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Writ Jurisdiction Case No.1197 of 2015

Arising Out of PS.Case No. -null Year- null Thana -null District- BHOJPUR

- =====
1. Yogesh Malhotra Son of Shri Brij Mohan Malhotra Resident of - House No. 345, 1st Floor, Sector 14, P.S. Sector 14, Faridabad, Haryana

.... Petitioner/s

Versus

1. The State of Bihar through its Home Secretary, Patna
2. Director General of Police, Patna
3. The Superintendent of Police, Bhojpur
4. The Officer In - Charge, P.S. Arrah, Nawada, District - Bhojpur
5. Amit Kumar Son of Shri Bhrameshwar Singh Resident of Hari Ji Ka Hata, Post Office Arrah, P.S. Arrah Nawada, District - Bhojpur

.... Respondent/s

WITH

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Criminal Writ Jurisdiction Case No. 1226 of 2015

Arising Out of PS.Case No. -null Year- null Thana -null District- BHOJPUR

- =====
1. Amit Goel Son of Shri Ram Sarup, Resident of Vidya Bhawan, Novelty Road, P.S. Karnal City, Karnal, Haryana.

.... Petitioner/s

Versus

1. The State of Bihar through its Home Secretary, Patna
2. Director General of Police, Patna
3. The Superintendent of Police, Bhojpur
4. The Officer In-charge, P.S.- Arrah, Nawada, District- Bhojpur.
5. Amit Kumar, Son of Shri Bhrameshwar Singh, Resident of Hari Ji Ka Hata, Post Office Arrah, P.S. Arrah Nawada, District- Bhojpur.

.... Respondent/s

WITH

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Criminal Writ Jurisdiction Case No. 1230 of 2015

Arising Out of PS.Case No. -null Year- null Thana -null District- BHOJPUR

- =====
1. Nitin Verma Son of Shri Ram Chander Resident of- House NO. 402, Sector 22A, P.S. Palam Vihar, Gurgaon, Haryana,

.... Petitioner/s

Versus



1. The State of Bihar Through Its Home Secretary, Patna .
2. Director General of Police, Patna.
3. The Superintendent of Police , Bhojpur.
4. The Officer-in-Charge, P.s Arrah, Nawada, District Bhojpur.
5. Amit kumar son of Shri Bhrameshwar singh Resident of Hari Ji Ka Hata, Post Office Arrah, ps. Arrah, Nawada, District Bhojpur.

.... Respondent/s

WITH

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Criminal Writ Jurisdiction Case No. 1231 of 2015

Arising Out of PS.Case No. -null Year- null Thana -null District- BHOJPUR

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1. Prakash Awasthi Son of Shri S.P. Awasthi presently residing at 28th Floor, K.Wah Centre, 1010 Huai Hai Road, Shanghai 200031, China.

.... Petitioner/s

Versus

1. The State of Bihar through its Home Secretary, Patna.
2. Director General of Police, Patna.
3. The Superintendent of Police, Bhojpur.
4. The Officer In-Charge, P.S. - Arrah, Nawada, District - Bhojpur.
5. Amit Kumar Son of Shri Bhrameshwar Singh Resident of Hari Ji Ka Hata, Post Office Arrah, P.S. - Arrah Nawada, District - Bhojpur.

.... Respondent/s

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Appearance :

(In all cases)

For the Petitioner/s : Mrs. Shama Sinha, Advocate

For the Respondent/s : Mr. Binod Jee Verma, GP-17

(In Cr. WJC No.1226 of 2015)

For the Respondent/s : Mr. Sunil Kumar Mandal, SC-3

Mr. Nilam Kumari, AC to SC-3

Mr. Arjun Prasad, AC to SC-3

(In Cr. WJC No.1230 of 2015)

For the Respondent/s : Mr. Ritesh Kumar, SC-33

(In Cr. WJC No.1231 of 2015)

For the Respondent/s : Mr. Rajesh Singh, GP-16

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CORAM: HONOURABLE MR. JUSTICE BIRENDRA KUMAR

ORAL JUDGMENT

Date: 15-12-2017

Heard learned counsel for the parties.

2. The petitioners are accused in Arrah Nawada (Town)



P.S. Case No. 255 of 2015, registered under Sections 341/323/365/511/504/506 of the Indian Penal Code on 14.07.2015 on the complaint filed by respondent No.5.

3. The present writ applications have been preferred for quashing the aforesaid F.I.R.

4. Learned counsel for the petitioners submits that the F.I.R. and entire criminal prosecution suffers from malice for the reason that respondent No.5 was an employee of the petitioners' company appointed through letter dated 23rd October, 2008 at Annexure-2. Subsequently, respondent No.5 was removed by the company vide letter dated 24.04.2014 at Annexure-5 and for that grudge the present F.I.R. has been lodged.

5. Next submission is that the plaint based F.I.R. suffers from non-compliance of the requirement of Section 154(3) and 156(3) Cr.P.C., as such the whole F.I.R. is fit to be quashed in view of the judgment of the Hon'ble Supreme Court in **Priyanka Srivastava and Another Vs. State of Uttar Pradesh and Others** reported in (2015) **6 SCC 287**.

6. Learned counsel for the State-respondents submits that the respondents have already stated in the counter affidavit that after investigation the police has submitted final form under Section 173 Cr.P.C. not sending up any of the accused for trial as allegation was



found untrue.

7. Learned counsel for the private respondent submits that there is specific allegation against the petitioner. Hence, the police should not have submitted final form as the F.I.R. discloses prima facie allegation of cognizable offence. Hence, it is not fit to be quashed.

8. The complaint petition does not reveal that the informant had moved the police for registration of a police case under Section 154(1) Cr.P.C. nor it reveal that the informant had moved the senior police officers complaining non-registration of the F.I.R. as required under Section 154(3) Cr.P.C. There is no material to substantiate that after ensuring the compliance aforesaid and after proper application of mind the learned Magistrate had asked the police to register the case in exercise of power under Section 156(3) Cr.P.C.

9. The observation of the Hon'ble Apex Court from paragraphs 27 to 31 in **Priyanka Srivastava's** case (supra) is being reproduced below, which is relevant for the purpose:

“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 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) Cr.P.C and also there is a separate procedure under the Recovery of Debts due to Banks and Financial Institutions 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 lodge 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 No. 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 No.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 the Appellant No. 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 No. 1. We are only stating about the devilish design of Respondent No. 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) Cr.P.C. 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.

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) 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 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 the 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. ”

10. Apparently, the F.I.R. suffers from non-compliance of mandatory statutory provisions prior to the registration of the same. Hence, the same is fit to be quashed on this ground alone. As such F.I.R. stands quashed and this writ application stands allowed.

(Birendra Kumar, J)

Mkr./-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	20.12.2017
Transmission Date	20.12.2017

