

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Writ Jurisdiction Case No. 1101 of 2016

Arising out of P.S. Case No. - null Year - null Thana - null District - BEGUSARAI

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Veena Kumari, wife of Indu Bhushan Sharma, Resident of Mohalla - Kasim Bazar,
P.S. - Kasim Bazar, District - Munger, presently posted as Programme Officer,
District - Katihar

.... Petitioner

Versus

1. The State of Bihar through Secretary, Department of Home, Government of Bihar, Patna
2. Ajit Kumar, Son of Satya Narayan Choudhary, Resident of Village - Pipradih,
P.S. - Ragaur, District - Banka, presently posted as Junior Engineer, Bchhwara
Block, P.S. - Bachhwara, District - Begusarai

.... Respondents

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Appearance :

For the Petitioner	: Mr. Rakesh Kumar Sharma, Advocate
For the Respondent No. 2	: Mr. Prahalad Kumar Bhagat, Advocate
For the State	: Mr. P.K. Verma, A.A.G.-III
	Mr. Divya Verma, A.C. to A.A.G.-III

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CORAM: HONOURABLE MR. JUSTICE BIRENDRA KUMAR

ORAL JUDGMENT

Date: 18-04-2017

The petitioner has invoked the writ jurisdiction, of this Court under Articles 226 and 227 of the Constitution of India, to quash the order dated 19.08.2014 passed by the learned Chief Judicial Magistrate, Begusarai whereby he has directed to institute an FIR under Section 156(3) of the Code of Criminal Procedure (in short the 'Cr.P.C.') on the basis of Complaint Case No. 14718 of 2014. Further prayer is to quash the FIR of Balia Police Station Case No. 373 of 2014 registered against the petitioner on the basis of said complaint of respondent no. 2 Ajit Kumar in pursuance of order dated 19.08.2014 passed by the learned Chief Judicial Magistrate, Begusarai.

2. Respondent no. 2 filed Complaint Case No. 14718 of



2014 against the petitioner with allegation that the petitioner while posted as Programme Officer of MANREGA, misappropriated public money of different government schemes fully detailed in the complaint petition.

3. On perusal of the complaint, the learned Chief Judicial Magistrate, Begusarai passed the order dated 19.09.2014 annexed at page 19 of the brief.

4. Submission of the petitioner is that under Section 30 of the MANREGA Act, 2005, there is protection for action taken in good faith by the public servants in such matter. Moreover, the complaint petition does not disclose that the respondent no. 2 had approached the police for institution of a police case of the matter or had complained to the higher police officials regarding non-institution of the FIR by the police in pursuance of the provisions under Section 154(3) of the Cr.P.C. nor has sworn affidavit of the averment in the complaint petition, therefore, the institution of FIR is against the ratio decided in **Priyanka Srivastava & Anr. Vs. The State of U.P. & Ors.** reported in **2015(6)SCC 287**. His next contention is that though the complaint petition was filed under Sections 409, 467, 468 and 471 of the Indian Penal Code, the averment in the complaint petition would reveal that there is allegation of corruption against the public servant, hence, the police might submit charge-sheet under the provisions of the Prevention



of Corruption Act, therefore, prior sanction under Section 19 of the said Act is essential. In the circumstances, the learned court below erred in entertaining the private complaint of corruption against the public servant without prior sanction. Reliance has been placed on **Anil Kumar & Ors. vs. M. K. Aiyappa & Anr.** reported in **2013(10) SCC 705**.

5. The respondents have already appeared. No counter affidavit has been filed on behalf of the State-respondent or private-respondent no. 2 in spite of last indulgence allowed for filing of the counter affidavit on 04.04.2017. However, submission of the learned counsel for the respondent no. 2 is that charge-sheet has already been submitted against the petitioner for offences under Sections 467, 468, 471 and 409 of the Indian Penal Code, therefore, at this stage, the trial need not be thwarted in spite of, prima facie, allegation is there against the petitioner.

6. Section 30 of MANREGA Act, 2005 reads as follows:-

“30. Protection of action taken in good faith.---- No suit, prosecution or other legal proceedings shall lie against the District Programme Coordinator, Programme Officer or any other person who is, or who is deemed to be, a public servant within the meaning of section 21 of the Indian Penal Code (45 of 1860) in respect of anything which is in good faith done or intended to be done under this Act or the rules or Schemes made thereunder.”

7. Submission of the petitioner is that the entire schemes were of the financial year 2009-10 and 2010-11 as mentioned in the



complaint petition and the petitioner had joined there on 18.05.2011 as per charge report at Annexure-3. Therefore, there is no scope of allegation in the year 2014 that the petitioner defalcated the public money of expired scheme, rather contention is that due to the case lodged by the petitioner against the respondent no. 2 vide Annexure-2, the present false case has been lodged.

8. To counter the aforesaid submission, learned counsel for the respondent no. 2 has relied on the preliminary inquiry report submitted in the matter by the Deputy Development Commissioner, Begusarai on 06.11.2015.

9. The report of the Deputy Development Commissioner does not reveal that the scheme of the year 2009-10 or 2010-11 was extended for the financial year 2011-12 and was continuing at the time of joining of the petitioner or thereafter. The preliminary inquiry report does not reveal that what amount under which of the scheme was, allegedly, defalcated by the petitioner. In the circumstances, the initiation of criminal proceeding, against the petitioner, suffers from malice and amounts to an abuse of the process of the Court.

10. So far second point of non-application of judicial mind by the learned Magistrate while passing the impugned order is concerned, the order at page 19 reads as follows:-

“(OC) Officer-in-Charge is hereby directed to investigate the case under Section 153(3) Cr.P.C. and submit report by



19.09.2014”

11. In Priyanka Srivastava’s case (**supra**), the Hon’ble Apex Court considered the similar question of non-disclosure of inaction of police, to the Senior Police Officer, complaining non-registration of the FIR under Section 154(3) of the Cr.P.C. and the complaint petition not supported by affidavit as well as non-application of judicial mind by the learned Magistrate while directing institution of an FIR and held as follows:-

“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 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 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 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) 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) 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 are being filed. That apart, the learned Magistrate would also be aware of the delay in lodging of the FIR.”

12. Learned counsel for the respondent no. 2 submits that the impugned order was passed and the FIR was registered in the year 2014 itself whereas the judgment of Hon’ble Apex Court in Priyanka Srivastava’s case (**supra**) was passed on 19th of March, 2015, hence, the impugned order cannot be interfered with on the basis of that judgment.

13. The statutory provisions were already there which should have been complied before directing registration of the FIR based on the complaint petition. Therefore, non-compliance of statutory provisions can be looked into at any subsequent stage and the judgment of the Hon’ble Apex Court in Priyanka Srivastava’s case (**supra**) is just a guidelines for considering the future cases and ensuring compliance of the mandates of law. Therefore, I am of the view, the impugned order suffers from non-application of judicial mind as the complaint petition does not disclose that the private complainant approached the police for registration of the case or made a complaint to the Senior Police Officers against non-registration of the case and abruptly made prayer in the complaint petition to get the same registered as police case under Section



156(3) of the Cr.P.C.

14. I do not find any force in the third point raised by the petitioner inasmuch as neither the FIR was registered nor charge-sheet has been submitted under the provisions of the Prevention of Corruption Act, therefore, there was no need for prior sanction for prosecuting the petitioner on private complaint.

15. In view of the discussions made above, the impugned order as well as the FIR of Balia Police Station Case No. 373 of 2014 and the subsequent criminal proceedings is hereby quashed. Accordingly, this writ application stands allowed.

(Birendra Kumar, J)

Kundan

AFR/NAFR	A.F.R
CAV DATE	N.A.
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