

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Writ Jurisdiction Case No.40 of 2017

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

- =====
1. Md. Jameer son of late Sahebjan
 2. Akhtari Khatoon wife of Md. Jameer
 3. Sadu Son of Md. Jameer
- All 1 to 3 are resident of Mohalla- Chakkar Road, Near Prabhat Tara School,
P.S. Kazimohammadpur, District- Muzaffarpur

.... Petitioner/s

Versus

1. The State of Bihar
2. The Superintendent of Police, Muzaffarpur
3. The Deputy Superintendent of Police (Town), Muzaffarpur
4. The Officer-in-Charge, Kazimohhadpur Police Station, District- Muzaffarpur.
5. Jubar Ahmad S/o. Abdul Rauf, resident of Mohalla- Chak Wahid Manjhouliya
Road, P.S. Kazimohammadpur, District- Muzaffarpur

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Shaishav Kumar, Advocate
For the Respondent/s : Mr. Prabhat Kumar Verma, AAG-3

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CORAM: HONOURABLE MR. JUSTICE BIRENDRA KUMAR

ORAL JUDGMENT

Date: 11-12-2017

Heard learned counsel for the parties.

2. This writ application was filed on 13.01.2017 praying therein for quashing the F.I.R. of Kazimohammadpur P.S. Case No.41 of 2015 registered under Sections 341/323/324/325/427/504/506/34 of the Indian Penal Code as well as Section 27 of the Arms Act vide Annexure-1.

3. The prayer is on the ground that the F.I.R. suffers from malicious prosecution as both sides are next door neighbours and brother of petitioner No.3 and daughter of respondent No.5 wanted to marry with each other, which was opposed by the informant and just to pressurize the petitioners the present false case has been lodged.

4. It was argued that the F.I.R. is based on complaint and the



complaint petition was referred for institution of the F.I.R. under Section 156(3) Cr.P.C. without application of mind by the Magistrate concern vide order dated 01.11.2014 passed by the learned Additional Chief Judicial Magistrate, Muzaffarpur, in the Complaint Case No. 2927 of 2014, as such the order of the Magistrate is against the requirement of Section 156(3) Cr.P.C. as held by the Hon'ble Apex Court in **Priyanka Srivastava and Another Vs. State of Uttar Pradesh and Others.**

5. Learned counsel for the respondent No.5 submits that there is disclosure of cognizable offence in the F.I.R. which has been supported by the witnesses during investigation and the police has already submitted charge sheet on 31.01.2017. Hence, the prayer of the petitioner has become infructuous now.

6. According to complaint based F.I.R., on 31.10.2015 the petitioners damaged the boundary wall of the informant and dug out the drainage system. When the informant protested, all the accused persons started quarrel and abused, accused Md. Jameer put the pistol at the pinea of the informant and threatened to kill and others allegedly committed assault and theft.

7. During investigation the eyewitnesses have supported the occurrence of assault due to land dispute. However, they have not supported the allegation of use of fire-arms as alleged in the F.I.R. or commission of theft. The record does not reveal that the informant had approached the police for registration of the case and on refusal had approached the Senior Police Officials as required under Section 154(3) Cr.P.C.

8. The learned Magistrate while sending the matter for registration of an F.I.R. recorded order dated 01.11.2014 as follows:

“Let the copy of the complaint petition be sent to the Officer-in-Charge Kazimohammadpur P.S. through the



Superintendent of Police, Muzaffarpur, for instituting the case under Section 156(3) Cr.P.C. and investigate the same and submit police report.”

9. Identical issue was considered by the Hon’ble Apex Court in **Priyanka Srivastava and Another Vs. State of Uttar Pradesh and Others** reported in (2015) 6 SCC 287. The relevant paragraph Nos.27 to 31 reads 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 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, in the present case the registration of F.I.R. suffers from non-application of judicial mind and non-compliance of requirement of Section 154(3) Cr.P.C. Therefore, the F.I.R. and entire subsequent criminal proceeding is fit to be quashed. Accordingly, the same is hereby quashed and this writ application stands allowed.

(Birendra Kumar, J)

Mkr./-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	13.12.2017
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