

HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

CRIMINAL PETITION No.2902 OF 2017

ORDER:

The present Criminal Petition is filed under Section 482 of the Code of Criminal Procedure, 1973 (for short 'the Code') requesting to quash the First Information Report in Crime No.72 of 2017 of Karimnagar (Rural) Police Station, Karimnagar District, Telangana State.

2. The petitioner, who is arraigned as sole accused in the aforesaid crime, alleged to have committed the offences punishable under Sections 427, 447 and 506 of Indian Penal Code, 1860 (for short 'IPC').

3. Heard Sri K. Venumadhav, learned counsel for the petitioner and the learned Additional Public Prosecutor for the State of Telangana.

4. The submission of the learned counsel for the petitioner is, that when a complaint under Section 200 of the Code was filed by respondent No.2 - *de facto* complainant before the Additional Judicial Magistrate of First Class, Karimnagar, the learned Magistrate forwarded the same to the Station House Officer, Karimnagar (Rural) Police Station for investigation and report, and there was no mind application at all by the learned Magistrate before referring the complaint under Section 156 (3) of the Code and, thus, there has been

a complete deviation of the law declared by the Hon'ble Supreme Court in **Priyanka Srivastava and others v. State of Uttar Pradesh and others**¹.

5. The learned Additional Public Prosecutor would strongly resist the request, but, however, expresses no quarrel with the law declared by the Hon'ble Supreme Court in the aforesaid decision.

6. Perused the material on record and the decision in **Priyanka Srivastava** (Supra). Paragraph No.27 is relevant in the present context. The Hon'ble Supreme Court held thus:

“27. In our considered opinion, a stage has come in this country where Section 156(3) Code of Criminal Procedure 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

¹. (2015) 6 SCC 287

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.”

The note put up by the office of the learned Magistrate is thus:

- “1. This is a complaint filed under section 200 Cr.P.C. by Sri B. Srinivas, counsel for the complainant, with a request to punish the accused sole for the offence punishable under section 427, 447, 506 IPC, according to law, by referring this matter to the Police for investigation under section 156 (3) of Cr.P.C.
2. Vakalat is filed and Court fee is paid.
3. Police Station Limits:- P.S. KNR (Rural).”

The Order passed by the learned Magistrate reads thus:

“ Forwarded to the S.H.O. P.S. KNR (Rural) for investigation and Report. Call on 9-3-2017.

Sd/
I-Addl.J.M.F.C. ”

7. Despite circulating a copy of the judgment of the Hon’ble Supreme Court in **Priyanka Srivastava** (Supra) along with Circular requiring all the learned Magistrates to follow the procedure laid

down by the Hon'ble Supreme Court, order of the learned Magistrate referring the matter to the police concerned is in complete deviation of the procedure mandated by the Hon'ble Supreme Court. Therefore, the order referring the matter under Section 156 (3) of the Code is liable to be set aside and, is accordingly, set aside.

8. In view of the above observation, the Criminal Petition is allowed directing the learned Additional Judicial Magistrate of First Class, Karimnagar, to follow the procedure laid down by the Hon'ble Supreme Court in **Priyanka Srivastava** (Supra) by obtaining an affidavit from the *de facto* complainant and to act in accordance with law by application of mind by going through the averments of the affidavit and relevant statements that would be placed.

As a sequel thereto, miscellaneous petitions, if any, pending in the petition stand closed.

A. SHANKAR NARAYANA, J

April 11, 2017.

Note:

The Registry is directed to dispatch a copy of the order to the learned Magistrate within a week.

(B/O.) Mgr