

HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

CRIMINAL PETITION No.2808 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 - I Town Police Station, Karimnagar District, Telangana State.

2. The petitioners, who are arraigned as accused Nos.1 to 7 in the aforesaid crime, alleged to have committed the offences punishable under Sections 448, 379, 420, 323 and 506 read with 34 of Indian Penal Code, 1860 (for short 'IPC') along with accused No.8.

3. Heard Sri P. Sajan Kumar, learned counsel for the petitioners and the learned Additional Public Prosecutor for the State of Telangana.

4. The relevant facts that are necessary for appreciation of the submissions of the learned counsel for the petitioners are that the petitioners herein alleged to have criminally trespassed into the house of respondent No.2 - *de facto* complainant by breaking open the lock and committed theft of DELL company Laptop, Reebok shoes, Ray-ban Glass, Rado watch, cash worth of Rs.25,000/- and other articles and cheated by taking an amount of Rs.9,00,000/- sent by him to the petitioners when he was in Doha Qatar, and when he demanded the

accused to return the articles and amount, they threatened him and his wife with dire-consequences to kill them.

5. The submission of the learned counsel for the petitioners is, that the petitioner Nos.5 and 6 herein have lodged a complaint and as a counter-blast, the present complaint is filed. His further submission 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 - I Town 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 **Mrs. Priyanka Srivastava and others v. State of Uttar Pradesh and others**¹.

6. 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.

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

¹. (2015) 6 SCC 287

“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 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 K.J.M. Reddy, counsel for the complainant, with a request to punish the accused 1 to 8 for the offence punishable under sections 448, 379, 420, 323 and 506 r/w 34 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 - I Town.”

The Order passed by the learned Magistrate reads thus:

“ Forwarded to the S.H.O. P.S. K.Nagar - I Town for investigation and Report. Call on 30-3-2017.

Sd/
I-Addl.J.M.F.C. ”

8. 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.

9. 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

