

HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

CRIMINAL PETITION No.2628 OF 2017

ORDER:

All the six petitioners herein arraigned as accused Nos.1 to 6 respectively, in Crime No.80 of 2017 of Subedari Police Station, Warangal District, filed the present petition requesting to quash the First Information Report in the said Crime by exercise of powers under Section 482 of the Criminal Procedure Code, 1973 (for short, 'the Code').

2. The 2nd respondent is the complainant, working as Divisional Engineer in Irrigation Department, residing at Ramnagar, Hanamkonda, Warangal District and the 1st petitioner is the wife and other petitioners are the relations of the 1st petitioner-wife. They alleged to have committed the offences punishable under Sections 147, 148, 452, 427, 323, 506, 495, 496, 417, 420 & 464 of IPC read with Section 149 of IPC.

3. Heard Sri Iqbal Ali Khan, the learned counsel for the petitioners and the learned Additional Public Prosecutor for the State of Telangana and Sri A. Prabhakar Rao, the learned counsel for the 2nd respondent/*de facto* complainant.

4. The main submission of the learned counsel for the petitioners has been that there is complete deviation of the law declared by the Hon'ble Supreme Court in **Priyanaka Srivastava v. State of Uttar**

Pradesh¹ in filing the complaint by the 2nd respondent and referring the matter by the learned Magistrate to the police concerned. Yet another submission made by him is that the 2nd respondent having married the 1st petitioner, which is second marriage as his wife died leaving two children, levelled false allegations against the 1st petitioner as she concealed her earlier marriage and even her relations concealed the same and even though earlier marriage is in subsistence, still, married him and also caused harassment, and thus, all the six accused persons alleged to have attacked him on 31.1.2017 at 6.00 p.m. by illegally trespassing into his house after preparation for assault and made terror and havoc in the minds of the complainant, his mother and his two small children, abused and threatened him to lead marital life with the 1st petitioner or in the alternative to give Rs.30,00,000/- to her, and, thereafter, the complainant rushed to Police Subedari and lodged the complaint.

5. According to the learned counsel for the petitioners, since the 1st petitioner herein lodged the complaint with Women P.S., Khammam, which was registered as Crime No.11 of 2015, against the 2nd respondent/*de facto* complainant, his mother, mother of first wife, and two others; and the petitioner also filed D.V.C. No.12 of 2015 on the file of I-Additional Judicial Magistrate of First Class, Khammam and when the 2nd respondent ignored the maintenance of the 1st petitioner she filed M.C. No.36 of 2015 claiming maintenance and the

¹ (2015) 6 SCC 287

2nd respondent herein concocted a story and as a counterblast filed the present complaint before the learned Magistrate.

6. It is also his submission that the petitioners 1 and 3 are housewives, petitioner No.2 is working in Singareni Collieries, petitioner No.6 is a senior citizen, aged 67 years, petitioner No.4 is working in Municipality, Mamindlagudem, Khammam, petitioner No.5 is Government Teacher working at Khammam and it is highly inconceivable for the petitioner Nos.4 and 5, namely, Pasham Rama Rao and Vasam Yakaiah, who are the public servants, would travel to Warangal within an hour to attack the 2nd respondent since the offences alleged to have taken place at 6.00 p.m. at Hanamkonda and the petitioner Nos.4 and 5 attended to their regular duties on the date of offence and this one circumstance is sufficient enough to view that the complaint allegations are created and concocted as a counterblast to Crime No.11 of 2015 of Woman P.S., Khammam, D.V.C. No.12 of 2015 and M.C. No.36 of 2015, registered against the 2nd respondent/*de facto* complainant.

7. The learned counsel has also filed copies of Attendance Certificate of petitioner No.4, Pasham Rama Rao, and petitioner No.5, Vasam Yakaiah, issued by the concerned Heads of Departments and even the timings as to when the petitioner No.4 left the office on 31.1.2017.

8. Whether the allegations made in the complaint would make out a *prima facie* case as to the commission of the offences alleged against the petitioners require consideration. The second main submission of the learned counsel for the petitioners is that there has been complete deviation in approach by the learned Magistrate and referring the complaint to the concerned police under Section 156 (3) of the Code from the principles laid down by the Hon'ble Supreme Court in **Priyanka Srivastava** (1 supra).

9. Instead of embarking upon the first submission made by the learned counsel, it would be relevant to take up the second submission made by the learned counsel for the petitioners. In **Priyanka Srivastava** (1 supra), Hon'ble Supreme Court laid down certain pre-conditions to be satisfied for exercise of power under Section 156 (3) of the Code by the learned Magistrate.

10. It would be appropriate to extract what has been held by the Hon'ble Apex Court, contained in paragraphs 19, 20, 27, 28 & 30 to 35, in **Priyanka Srivastava** (1 supra).

“19. We have narrated the facts in detail as the present case, as we find, exemplifies in enormous magnitude to take recourse to Section 156(3) CrPC, as if, it is a routine procedure. That apart, the proceedings initiated and the action taken by the authorities under the SARFAESI Act are assailable under the said Act before the higher forum and if, a borrower is allowed to take recourse to criminal law in the manner it has been taken, it needs no special emphasis to state, has the inherent potentiality to affect the marrows of economic health of the nation. It is clearly noticeable that the statutory remedies have cleverly been bypassed and prosecution route has been undertaken for instilling fear amongst the individual authorities compelling them to concede to the request for one-time settlement which the financial institution possibly might not have acceded. That apart, despite

agreeing for withdrawal of the complaint, no steps were taken in that regard at least to show the bona fides. On the contrary, there is a contest with a perverse sadistic attitude. Whether the complainant could have withdrawn the prosecution or not, is another matter. Fact remains, no efforts were made.

20. The learned Magistrate, as we find, while exercising the power under Section 156(3) CrPC has narrated the allegations and, thereafter, without any application of mind, has passed an order to register an FIR for the offences mentioned in the application. The duty cast on the learned Magistrate, while exercising power under Section 156(3) CrPC, cannot be marginalised. To understand the real purport of the same, we think it apt to reproduce the said provision:

“156. Police officer's power to investigate cognizable case.—

(1) Any officer in charge of a police station may, without the order of a Magistrate, investigate any cognizable case which a court having jurisdiction over the local area within the limits of such station would have power to inquire into or try under the provisions of Chapter XIII.

(2) No proceeding of a police officer in any such case shall at any stage be called in question on the ground that the case was one which such officer was not empowered under this section to investigate.

(3) Any Magistrate empowered under Section 190 may order such an investigation as abovementioned.”

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.

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* [(2014) 2 SCC 1 : (2014) 1 SCC (Cri) 524] are being

filed. That apart, the learned Magistrate would also be aware of the delay in lodging of the FIR.

32. The present lis can be perceived from another angle. We are slightly surprised that the financial institution has been compelled to settle the dispute and we are also disposed to think that it has so happened because the complaint cases were filed. Such a situation should not happen.

33. At this juncture, we may fruitfully refer to Section 32 of the SARFAESI Act, which reads as follows:

“32. Protection of action taken in good faith.—No suit, prosecution or other legal proceedings shall lie against any secured creditor or any of his officers or manager exercising any of the rights of the secured creditor or borrower for anything done or omitted to be done in good faith under this Act.”

In the present case, we are obligated to say that the learned Magistrate should have kept himself alive to the aforesaid provision before venturing into directing registration of the FIR under Section 156(3) CrPC. It is because Parliament in its wisdom has made such a provision to protect the secured creditors or any of its officers, and needless to emphasise, the legislative mandate has to be kept in mind.

34. In view of the aforesaid analysis, we allow the appeal, set aside the order passed [*Priyanka Srivastava v. State of U.P.*, Criminal Misc. WP No. 24561 of 2011, decided on 23-12-2011 (All)] by the High Court and quash the registration of the FIR in case Crime No. 298 of 2011, registered with Police Station Bhelupur, District Varanasi, U.P.

35. A copy of the order passed by us be sent to the learned Chief Justices of all the High Courts by the Registry of this Court so that the High Courts would circulate the same amongst the learned Sessions Judges who, in turn, shall circulate it among the learned Magistrates so that they can remain more vigilant and diligent while exercising the power under Section 156(3) CrPC.”

11. When the order passed by the learned Magistrate in the present case is seen in the light of the principles laid down by the Hon'ble Apex Court in **Priyanka Srivastava** (1 supra), certainly, it has to be said that it would not satisfy the pre-conditions for the following reasons.

12. Firstly, the 2nd respondent/*de facto* complainant in his complaint under Section 200 of Cr.P.C. mentions in the last but three paragraphs that, though, he rushed to the Subedari Police Station and lodged a report, but the police Subedari did not initiate any action against the accused and they did not issue any receipt, that he has waited for the action of Police Subedari and since the police Subedari did not initiate any action he has sent his representation to the Commissioner of Police, Warangal, with a request to direct the concerned police to take action against the accused persons, but no action was initiated, and then only he filed the present complaint. Admittedly, he has not chosen to annex a copy of the report said to have lodged with the police Subedari.

13. Second, he has not filed copy of representation said to have sent to the Commissioner of Police, Warangal.

14. Third, he has not filed an affidavit, which is one of the pre-conditions laid down by the Hon'ble Supreme Court in the aforementioned ruling. The learned Magistrate, somehow, ignored all these aspects and received the complaint. The office of the learned Magistrate has not taken care in mentioning whether the aforesaid documents are annexed to or not. The endorsement made by the office of the learned Magistrate, dated 9.2.2017, along with order passed on 20.2.2017 by the learned Magistrate read thus:

Office Note, dt. 9.2.2017

This is a petition filed under Section 200 Cr.P.C. praying the Court to refer the case to the SHO for investigation and report.

Offence u/s. 147, 148, 452, 427, 323, 506, 495, 496, 417, 420,
464 read with 149 IPC.

Submitted
Sd/- 9.2.2017

No representation. For hearing, call on 20.2.2017

Sd/-
9.2.2017

20.2.2017

Complainant called present. Counsel present. Heard.
For orders, as steno is on leave, call on 21.2.2017.

Sd/-
20.2.2017

Further, the order passed on 21.2.2017 read thus:

21.2.2017

Due to oversight, file not put up before P.O. on 21.2.2017.
Hence, may be permitted to call on 28.2.2017.

Referral order, dated 28.2.2017, regarding the complaint to the
concerned police for registration and investigation and report read
thus:

28.2.2017

Complainant called present. Counsel present. A perusal of the
complaint it appear that further probe is required into the matter. As
there is a prima facie case appearing against the accused persons it
appears that the probe into the matter that is the alleged incident is
necessary. Hence, the complaint is referred u/s. 156 (3) Cr.P.C., to
concerned police for registration and investigation and report as early
as possible.

Sd/-
28.2.2017

15. A comprehensive look at the aforesaid note of the office and the
orders passed by the learned Magistrate would clearly indicate the
lapses on the part of the 2nd respondent/*de facto* complainant herein in
non-observance of the pre-conditions laid down by the Hon'ble Apex
Court in **Priyanka Srivastava** (1 supra). Thus, it is clear that copies
of the complaint lodged with the police, representation said to have
submitted to the Commissioner of police, Warangal and the affidavit

of the *de facto* complainant have not been filed. Therefore, certainly, request to quash the First Information Report issued by the police, which is now questioned, cannot be rejected.

16. Hence, the First Information Report in Crime No.80 of 2017 of Subedari Police Station, Warangal District, is quashed.

17. Further, question that arises for consideration is, whether anything more can be done in the present circumstances to cure the defect.

18. Certainly, something more can be done since what is quashed is the First Information Report alone at the threshold not on merits, but on technicalities. Therefore, the learned Magistrate is directed to follow the decision of the Hon'ble Apex Court in **Priyanka Srivastava** (1 supra) and require the 2nd respondent/*de facto* complainant to comply with the pre-conditions laid down by the Hon'ble Supreme Court. Thereafter, the learned Magistrate to consider afresh and pass appropriate orders in accordance with law by application of mind, as laid down in **Priyanka Srivastava** (1 supra).

19. Therefore, the present Criminal Petition is allowed with the directions to the learned Magistrate as indicated in the above.

As a sequel thereto, miscellaneous petitions if any pending in the Criminal Petition shall stand closed.

A.SHANKAR NARAYANA

Date:05.06.2017.

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