

THE HON'BLE SRI JUSTICE T.SUNIL CHOWDARY

CRIMINAL PETITION No.3588 of 2017

ORDER:

This petition is filed under Section 482 Cr.P.C., to quash the proceedings in Crime No.86 of 2017 on the file of the Station House Officer, Nandyal III Town Police Station, Kurnool District, registered for the offence punishable under Sections 415, 420 and 409 IPC.

2. The learned counsel for the petitioner submitted that no affidavit is filed by the second respondent-complainant along with the private complaint; therefore it is a fit case to quash the proceedings against the petitioner-accused. He further submitted that the learned Magistrate has referred the matter to the Station House Officer, Nandyal III Town Police Station, under Section 156(3) of Cr.P.C., without applying mind to the facts of the case. The learned Assistant Public Prosecutor submitted that the irregularity committed by the trial court is curable; therefore, it is not a fit case to quash the proceedings.

3. A perusal of the record reveals that the second respondent filed a complaint under Section 200 Cr.P.C., on the file of the Court of Judicial Magistrate of First Class, Nandyal, against the petitioner for the offences punishable under Sections 415, 420 and 409 IPC. The learned Magistrate, while exercising the jurisdiction under Section 156(3) Cr.P.C., referred the matter to the Station House Officer, Nandyal III Town Police Station for investigation and report. On receipt of the same, the Station House Officer, Nandyal

III Town Police Station registered the case in Crime No.86 of 2017 for the offence punishable under Sections 415, 420 and 409 IPC

4. To substantiate his argument, learned counsel for the petitioner has drawn the attention of this Court to the decision in **Priyanka Srivastava v. State of U.P.**¹. The relevant portion of the said decision at para-27 reads as follows:

27. 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 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 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.

5. As per the principle enunciated in the case cited supra, the complainant has to file the affidavit in support of the complaint.

¹ 2015 Cr.L.J.2396

Further, the learned Magistrate has to apply judicial mind to the facts of the case and then refer the matter to the Police under Section 156(3) Cr.P.C., taking into consideration the nature of the offence alleged to have been committed by the accused.

6. A perusal of the record clearly reveals that the complainant has not filed the affidavit in support of the complaint. The learned Magistrate, without observing the same, passed the following order:

Complainant present. Heard. Complaint forwarded to S.H.O., III Town P.S., Nandyal under Section 156(3) Cr.P.C. for investigation and filing report. Call on 21.4.2017.

7. A perusal of the above order clearly establishes that learned Magistrate has not applied judicial mind to the facts of the case on hand before referring the matter to the Police under Section 156(3) Cr.P.C. The learned Magistrate has not followed the principle enunciated in **Priyanka Srivastava** Case despite circulating a copy of the same. The learned Magistrate has referred the matter to the Police is in complete deviation of the principle enunciated in the case cited supra. Therefore, the order passed by the learned Magistrate referring the matter to police for investigation and report is liable to be set aside.

8. Having regard to the facts and circumstances of the case and also the principle enunciated in the case cited supra, I am of the considered view that it is a fit case to quash the proceedings in Crime No.86 of 2017 on the file of the Station House Officer, Nandyal III Town Police Station, Kurnool District.

9. In the result, the Criminal Petition is allowed setting aside the order dated 06.3.2017 in CFR No.1452 of 2017 on the file of the Court of the Judicial Magistrate of First Class, Nandyal. Consequently, F.I.R. in Crime No.86 of 2017 on the file of the Station House Officer, Nandyal III Town Police Station is hereby quashed. The learned Judicial Magistrate of First Class, Nandyal, is hereby directed to follow the procedure laid down by the Hon'ble Supreme Court in **Priyanka Srivastava's** case by obtaining an affidavit from the *de facto* complainant and to act upon in accordance with law by applying judicial mind to the averments of the affidavit and relevant statement that would be placed by the *de facto* complainant. Miscellaneous Petitions, if any pending in this Criminal Petition, shall stand closed.

Date: 08.06.2017
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T.SUNIL CHOWDARY, J

