

HONOURABLE SRI JUSTICE A. SHANKAR NARAYANA

CRIMINAL PETITION No.292 OF 2017

ORDER:

Heard Sri B.Venkateswara Rao, learned counsel on behalf of Sri M.V.Durga Prasad, learned counsel for the petitioner and the learned Additional Public Prosecutor for the State of Telangana.

The present petition is filed under Section 482 of the Code of Criminal Procedure 1973 for quashment of the FIR in Crime No.361 of 2016 dated 09.12.2016, against the sole petitioner arraigning him as an accused for the offences punishable under Sections 447 and 506 IPC.

On the basis of a private complaint laid under Section 200 of Code of Criminal Procedure by the second respondent herein, the learned XIII Metropolitan Magistrate, Cyberabad at L.B.Nagar has referred the matter to the Station House Officer, P.S.Nacharam for investigation and report under Section 156(3) Cr.P.C. It would be appropriate to extract the said order passed by the learned magistrate, which is thus:

‘Heard. The matter is referred to SHO, PS Nacharam for investigation and report U/ Sec.156(3) of Cr.P.C.’

The subject of attack is, the order does not reflect application of mind by the learned Magistrate and in a similar situation, the Hon’ble Supreme Court has declared the law, that the learned Magistrate should keep a life to the provision of Section 156(3) Cr.P.C. before venturing into directing the registration of FIR. It would be relevant to refer to the earlier

authorities surveyed by the Hon'ble Apex Court in “*PRIYANKA SRIVASTAVA AND ANOTHER v. STATE OF UTTAR PRADESH AND OTHERS*”¹ containing in paragraphs 21 to 25 thus:

“21. Dealing with the nature of power exercised by the Magistrate under Section 156(3) of the CrPC, a three-Judge Bench in *Devarapalli Lakshminarayana Reddy and others v. V. Narayana Reddy and others*, had to express thus: (SCC p.258, para 17)

“17.It may be noted further that an order made under sub-section (3) of Section 156, is in the nature of a peremptory reminder or intimation to the police to exercise their plenary powers of investigation under Section 156(1). Such an investigation embraces the entire continuous process which begins with the collection of evidence under Section 156 and ends with a report or charge-sheet under Section 173.”

22. In *Anil Kumar v. M.K. Aiyappa*, the two-Judge Bench had to say this: (SCC p.711, para 11)

“11. The scope of Section 156(3) CrPC came up for consideration before this Court in several cases. This Court in *Maksud Saiyed* [(2008) 5 SCC 668] examined the requirement of the application of mind by the Magistrate before exercising jurisdiction under Section 156(3) and held that where jurisdiction is exercised on a complaint filed in terms of Section 156(3) or Section 200 CrPC, the Magistrate is required to apply his mind, in such a case, the Special Judge/Magistrate cannot refer the matter under Section 156(3) against a public servant without a valid sanction

¹ (2015) 6 Supreme Court Cases 287

order. The application of mind by the Magistrate should be reflected in the order. The mere statement that he has gone through the complaint, documents and heard the complainant, as such, as reflected in the order, will not be sufficient. After going through the complaint, documents and hearing the complainant, what weighed with the Magistrate to order investigation under Section 156(3) CrPC, should be reflected in the order, though a detailed expression of his views is neither required nor warranted. We have already extracted the order passed by the learned Special Judge which, in our view, has stated no reasons for ordering investigation.”

23. In *Dilawar Singh v. State of Delhi*⁴, this Court ruled thus: (SCC p.647, para 18)

“18. ...11. The clear position therefore is that any Judicial Magistrate, before taking cognizance of the offence, can order investigation under Section 156(3) of the Code. If he does so, he is not to examine the complainant on oath because he was not taking cognizance of any offence therein. For the purpose of enabling the police to start investigation it is open to the Magistrate to direct the police to register an FIR. There is nothing illegal in doing so. After all registration of an FIR involves only the process of entering the substance of the information relating to the commission of the cognizable offence in a book kept by the officer in charge of the police station as indicated in Section 154 of the Code. Even if a Magistrate does not say in so many words while directing investigation under Section 156(3) of the Code that an FIR should be registered, it is the duty of the officer in charge of the police station to register the FIR regarding the cognizable offence disclosed by the complainant because that police officer could take

further steps contemplated in Chapter XII of the Code only thereafter.”

24. In *CREF Finance Ltd. v. Shree Shanthi Homes (P) Ltd.*⁵, the Court while dealing with the power of Magistrate taking cognizance of the offences, has opined that having considered the complaint, the Magistrate may consider it appropriate to send the complaint to the police for investigation under Section 156(3) of the Code of Criminal Procedure. And again: (*Madhao v. State of Maharashtra*, SCC pp.620-21, para 18)

“18. When a Magistrate receives a complaint he is not bound to take cognizance if the facts alleged in the complaint disclose the commission of an offence. The Magistrate has discretion in the matter. If on a reading of the complaint, he finds that the allegations therein disclose a cognizable offence and the forwarding of the complaint to the police for investigation under Section 156(3) will be conducive to justice and save the valuable time of the Magistrate from being wasted in enquiring into a matter which was primarily the duty of the police to investigate, he will be justified in adopting that course as an alternative to taking cognizance of the offence itself. As said earlier, in the case of a complaint regarding the commission of cognizable offence, the power under Section 156(3) can be invoked by the Magistrate before he takes cognizance of the offence under Section 190(1)(a). However, if he once takes such cognizance and embarks upon the procedure embodied in Chapter XV, he is not competent to revert back to the pre-cognizance stage and avail of Section 156(3).”

25. Recently, in *Ramdev Food Products Private Limited v. State of Gujarat*⁶, while dealing with the exercise of power under Section 156(3) CrPC by the learned Magistrate, a three-Judge Bench has held that: (SCC p.456, para 22)

“22.1. The direction under Section 156(3) is to be issued, only after application of mind by the Magistrate. When the Magistrate does not take cognizance and does not find it necessary to postpone instance of process and finds a case made out to proceed forthwith, direction under the said provision is issued. In other words, where on account of credibility of information available, or weighing the interest of justice it is considered appropriate to straightaway direct investigation, such a direction is issued.

22.2. The cases where Magistrate takes cognizance and postpones issuance of process are cases where the Magistrate has yet to determine “existence of sufficient ground to proceed.”

It is also appropriate to extract paragraph 33 as to the law declared by the Hon’ble Supreme Court in the above said decision thus:

“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 learned Magistrate should have kept himself alive to the aforesaid provision before venturing into directing registration of the FIR under Section 156(3) Cr.P.C. It is because the Parliament in its wisdom has made such a provision to protect the secured creditors or any of its officers, and needless to emphasize, the legislative mandate, has to be kept in mind”.

Thus, the Hon’ble Supreme Court has emphasized the duty and approach of Magistrate while exercising the power under Section 156(3) Cr.P.C., clarifying the law as to pre-conditions to be satisfied to prevent abuse of process and the vigilance which the Magistrate requires to be kept in view.

If the ratio laid down by the Hon’ble Apex Court in the aforesaid ruling is applied, certainly, the order passed by the learned Magistrate, extracted above, does not deserve to be sustained.

The next question that arises for consideration is while setting aside the order under challenge herein where FIR was registered pursuant to the said order, matter can be remitted requiring the learned Magistrate for exercising discretion by application of mind. In that direction, the learned counsel has also places reliance on the decision of a learned single Judge of this Court in *S.PURNACHANDRA RAO AND ANOTHER v. STATE OF A.P. REP.BY ITS PUBLIC PROSECUTOR, HIGH COURT OF A.P. AND*

*ANOTHER*² pointing out that where a similar situation has arisen though not in relation to referring the matter under Section 156(3) Cr.P.C. but relating to a matter under Section 155(2) which concerns with alleged commission of non-cognizable offence, this Court while setting aside the order, remitted the matter directing the learned Magistrate to pass an order showing application of mind to the facts in issue while referring the case to police for investigation into a non-cognizable offence.

The basis for passing such an order by the learned single Judge is again the law laid down by the Hon'ble Apex Court in Anil Kumar's Case (supra). In such an event, certainly the present petition has to be allowed and accordingly the Criminal Petition is allowed setting aside the order dated 08.11.2016 in crime No.361 of 2016 of P.S.Nacharam remitting the matter to the learned XIII Metropolitan Magistrate, Cyberabad at L.B.Nagar with a direction to pass an order by application of mind to the facts in issue and the preconditions laid down by the Hon'ble Supreme Court in Priyanka's case while referring the case to the concerned police for investigation.

Accordingly, the Criminal Petition is allowed.

A. SHANKAR NARAYANA, J

25th January 2017
Pns/ Mgr

² 2015(1) ALT (Cr.) 49 (A.P.)