

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRIMINAL PETITION NO.9778 OF 2017

ORDER:

This petition is filed under Section 482 of the Code of Criminal Procedure (Cr.P.C.) to quash the proceedings in Crime No.221 of 2017 of Saidabad P.S., Hyderabad, filed for the offences punishable under Sections 420, 406 and 384 of the Indian Penal Code (IPC), which was registered based on the reference made by the VII Additional Chief Metropolitan Magistrate, Hyderabad exercising power under Section 156(3) Cr.P.C.

The second respondent filed complaint against the petitioner for the offences punishable under Sections 406, 420 and 384 IPC and after verifying the material, the Magistrate passed an order dated 10.08.2017 referring the case to the police having jurisdiction exercising power under Section 156(3) Cr.P.C.

The only ground urged in this Criminal Petition is that the petitioner did not comply with the requirements as held by the Apex Court in **Priyanka Srivastava v. State of U.P.**¹. The Apex Court in **Priyanka Srivastava** (1 supra) directed to verify the allegations made in the private complaint to make them more responsible for the allegations made against the accused therein. But the petitioner did not comply with the requirements or guidelines and therefore, sought quashment of the proceedings.

The second respondent filed counter admitting her failure to file an affidavit verifying the allegations made in the private complaint in para-6 of the counter. The failure of the second respondent to file an affidavit is an undisputed fact.

¹ (2015)6 SCC 287

The Apex Court in **Priyanka Srivastava** (1 supra) expressed its opinion as under.

“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 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 case 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 v.**

Government of U.P.² are being filed. That apart, the learned Magistrate would also be aware of the delay in lodging of the FIR.”

The purport of the observations made by the Apex Court is to make the complaint more responsible and that no false affidavit is filed verifying the allegations. But in the entire judgment, the Apex Court did not conclude that if the affidavit is not filed the proceedings are to be quashed. In any view of the matter, since the object is only to make the complaint more responsible, it is directed to verify the allegations made in the complaint by an affidavit and merely because the party is unaware of the legal requirement, the criminal proceedings cannot be quashed at the threshold to meet the requirement as per the judgment. I find it is a fit case to direct the petitioner to file an affidavit in terms of the judgment in **Priyanka Srivastava** (1 supra) before the Magistrate concerned within a period of fifteen days from the date of receipt of a copy of this order and in case the petitioner fails to file affidavit verifying the allegations complying with the directions of the Apex Court in **Priyanka Srivastava** (1 supra), the Magistrate is directed to reject the complaint on the sixteenth day itself.

With the above directions, the Criminal Petition is disposed of. Miscellaneous petitions, if any, pending shall stand closed.

(M.SATYANARAYANA MURTHY, J)

18th December 2017
RRB

² (2014)2 SCC 1