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**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CRM-M-10818 of 2017 (O&M)

Date of decision: December 11, 2017

Dharam Pal Bhagat

.....Petitioner

Versus

State of Punjab and another

.....Respondents

CORAM: HON'BLE MR. JUSTICE A.B. CHAUDHARI

Present: Mr. P.S. Hundal, Senior Advocate with
Mr. Dinesh Trehan, Advocate for the petitioner.

Mr. Dhruv Dayal, Sr. DAG Punjab.

Mr. K.S. Dadwal, Advocate for respondent No.2.

A.B. CHAUDHARI, J (Oral)

Rule. Heard forthwith with the consent of learned counsel for the rival parties.

It is not in dispute that respondent No.2-complainant filed a complaint case before the Special Court constituted under the Prevention of Corruption Act, 1988 against the present petitioner, under Section 156(3) of Code of Criminal Procedure, 1973 (for short 'Cr. P.C.') and that is evident from order dated 29.07.2016 made under Section 156(3) Cr. P.C.

Learned counsel for the complainant fairly states that the said complaint was filed without filing any First Information Report (for short 'FIR) under Section 154(1) Cr. P.C. or complying with Section 154(3) Cr. P.C. He further submits that now the FIR has been lodged by the concerned vigilance bureau and investigation is on.

Learned Senior counsel for the petitioner submits that old incidents are being projected in the complaint that was filed under Section

156(3) Cr. P.C.

Without going into the merits of the matter regarding the transactions, which allegedly have taken place, I find that the issue on the aforesaid admitted factual scenario is no more *res integra* in view of the decision of the Apex Court in the case of **Priyanka Srivastava and another versus State of U.P. and others**, 2015 (2) R.C.R. (Criminal) 1034 and particularly Paras 26 and 27 thereof. I quote Paras 26 and 27 from the said judgment, which read thus:-

“26. At this stage it is seemly to state that power under Section 156(3) warrants application of judicial mind. A court of law is involved. It is not the police taking steps at the stage of Section 154 of the code. A litigant at his own whim cannot invoke the authority of the Magistrate. A principled and really grieved citizen with clean hands must have free access to invoke the said power. It protects the citizens but when pervert litigations takes this route to harass their fellows citizens, efforts are to be made to scuttle and curb the same.

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 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 *ratio decidendi* in the said Supreme Court decision is as clear as it could be that the proceedings under Section 156(3) Cr. P.C. would not be maintainable unless there is compliance shown to the Court regarding compliance of Section 154(1) Cr. P.C. and 154(3) Cr. P.C. That is categorical finding recorded in the said judgment and the said findings are binding on this Court. In that view of the matter, for proper implementation of the law, I think the complaint under Section 156(3) Cr. P.C. and consequent order thereof cannot be allowed to remain.

Learned counsel for the complainant submits that in that event,

liberty may be granted in favour of respondent No.2-complainant to take up such steps as available in law for compliance of Section 154(1) Cr. P.C. and Section 154(3) Cr. P.C.

I think the request made by learned counsel for respondent No.2-complainant is legal, correct and proper. In the result, following order is passed:-

ORDER

- (i) Leave is granted to amend the petition to challenge order dated 29.07.2016 under Section 156(3) Cr. P.C. The same shall be added at the prayer clause of this petition;
- (ii) Rule is made absolute. Petition is allowed. Proceedings of complaint under Section 156(3) Cr. P.C. are quashed and set aside. Consequently, FIR No.23/2016 dated 16.08.2016 (Annexure P-1), under Sections 7/11/12/13(i)(c)(d) read with Section 13(2) of Prevention of Corruption Act, 1988 and Sections 406, 409, 420, 465, 468, 471, 120-B of Indian Penal Code, 1860, registered at Police Station Vigilance Bureau, Amritsar is also quashed;
- (iii) Liberty is reserved in favour of respondent No.2-complainant to take up such steps as available in law after compliance of Section 154(1) Cr. P.C. and 154(3) Cr. P.C.

(A.B. CHAUDHARI)
JUDGE

December 11, 2017

mahavir

Whether speaking/ reasoned: **Yes**

Whether Reportable: **Yes**