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

CRM-M-26099 of 2017

Date of decision: December 07, 2017

Vish Chaudhary and others

.....Petitioners

Versus

State of Haryana and another

.....Respondents

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

Present: Mr. Ankur Lal, Advocate,
for the petitioners.

Ms. Tanisha Peshawaria, DAG, Haryana.

A.B. CHAUDHARI, J (Oral)

CRM No.37085 of 2017

Heard.

Application is allowed for the reasons stated therein. Main case i.e. CRM-M-26099 of 2017 is restored to its original number and is taken up for hearing today itself.

CRM-M-26099 of 2017

Rule Heard forthwith.

With the consent of counsel for the rival parties, the only question that arises for consideration is as under:-

“Whether the proceedings under Section 156 (3) Cr.P.C. could be entertained by the learned Magistrate in the absence of compliance of Section 154(1) and 154(3) of Cr.P.C.”

Learned counsel for the petitioner vehemently contended

that the aforesaid question is no more *res integra* and has been categorically decided in the case of **Priyanka Srivastava and another vs. State of U.P. And others 2015(2) RCR (Criminal) 1034**, and particular Para 26 & 27.

Per contra learned counsel for the complainant submitted that the facts **Priyanka Srivastava's case (supra)** related to the borrower who alleged offences against the officers by lodging the proceedings under Section 156(3) Cr.P.C., in order to avoid the proceedings against him for recovery of money under SARFAESI Act. He therefore submits that on facts, the judgment should not be applied to the present case. His grievance is that his client has been duped in the sum of around Rs.20 lacs and is a poor person whose money was fraudulently taken away. He also submitted that the offence in question took place in March 2015 whereas, the judgment in the case of **Priyanka Srivastava** was circulated in May 2015.

Upon hearing learned counsel for the rival parties, I find the following are the relevant paragraphs namely Para 26 & 27 which I quote hereunder from the judgment of the case of **Priyanka Srivastava:-**

*“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 Apex Court in the above decision has categorically laid down the law as to the procedure that is required to be followed before approaching the Magistrate under Section 156(3) Cr.P.C. I therefore answer the question in the affirmative.

The attempt made by learned counsel for the complainant for distinguishing the said decision in the case of Priyanka Srivastava does not appeal to me. In the above decision, law has been clearly laid down in Para 26 & 27 which is binding on this Court. Whether or not said case related to SARFAESI Act and that remedy under the SARFAESI Act being available criminal proceedings would be taken

up or not under Section 156(3) Cr.P.C. is not relevant.

In that view of the matter, petition must be allowed.

However, I find that the complainant cannot be debarred from taking of the appropriate remedies in terms of the law laid down by the Apex Court in the aforesaid decision.

Learned counsel for the complainant submitted that by this time, challan has also been filed. Even if that is so the law must take its cause. Consequently, the impugned order must be quashed and set aside. At the same time complainant must be allowed to take up his remedy as is available in law.

In that view of the above, the following order is passed:

ORDER

- (i) Rule is made absolute.
- (ii) Impugned order dated 08.05.2015 is quashed and set aside with the liberty reserved in favour of the complainant to take up such remedy as is available to him in law.
- (iii) Name of the observations made hereinabove shall influence the trial Magistrate in the fresh cause.

Disposed of.

(A.B. CHAUDHARI)
JUDGE

December 07, 2017
anju rani

Whether speaking/ reasoned: Yes/No
Whether Reportable: Yes/No