

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Writ Jurisdiction Case No.610 of 2017

Arising Out of PS. Case No.-445 Year-2016 Thana- MOTIHARI TOWN District- East
Champaran

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1. Mukul Chandra Bhushan son of Chandra Bhushan Dhruv
 2. Chandra Bhushan Dhruv son of Late Chandra Deo Narayan Both Residents of Village - Gurhanwa, Police Station - Kundwa Chainpur, District - East Champaran.

... .. Petitioners

Versus

1. The State Of Bihar through the Principal Secretary Department of Home Affairs, Govt. of Bihar, Patna
2. The Superintendent of Police, East Champaran at Motihari.
3. The Officer in Charge, Town Police Station, Motihari, District - East Champaran.

... .. Respondents

Appearance :

For the Petitioner/s : Mr.Dhurendra Kumar
For the Respondent/s : Mr.Md. Nasrul Huda Khan Sc1

CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH
ORAL JUDGMENT

Date : 06-08-2019

Heard learned counsel for the petitioners and learned counsel for the State.

2. This application under Articles 226 and 227 of the Constitution of India has been filed by the petitioners for quashing the first information report (for short 'FIR') of Motihari Town P.S. Case No. 445 of 2016 registered under Sections 406, 420, 467, 468, 387 and 506 read with 34 of the Indian Penal Code.

3. Learned counsel appearing for the petitioners submitted that the criminal prosecution launched against the petitioners is malicious in nature. He contended that initially a



complaint was filed in the court of Chief Judicial Magistrate, Motihari, East Champaran, which was referred to the police in exercise of powers conferred under Section 156(3) of the Code of Criminal Procedure (for short 'Cr.P.C') on the mere asking of the petitioners for investigation pursuant to which the FIR has been instituted and investigation has been taken up. He contended that the order passed by the learned Chief Magistrate directing for investigating the case pursuant to which the FIR has been instituted is bad in law in view of the ratio laid down by the Supreme Court in the matter of *Priyanka Srivastava Vs. State of U.P.*, [(2015) 6 SCC 287].

4. Per contra, learned counsel appearing for the State submitted that the allegations made in the FIR, which is based on a complaint filed in the court, would clearly attract the ingredients of the offences alleged. He contended that on completion of investigation, the police have found the case true and submitted charge-sheet in the court. Hence, no interference can be made by the Court at this stage.

5. I have heard learned counsel for the parties and perused the materials available on record.



6. One Chandra Kishore Madan had filed Complaint Case No. 1000 of 2016 in the court of Chief Judicial Magistrate, Motihari, East Champaran.

7. In the complaint, the petitioners were made accused.

8. A prayer was made in the complaint filed in the court to refer the same to the police for investigation under sub-section (3) of Section 156 of the Cr.P.C.

9. The said complaint was taken up by the court on 02.06.2016 and, on the same day, the learned Chief Judicial Magistrate sent the complaint to the police for investigation in exercise of power conferred under sub-section (3) of Section 156 of the Cr.P.C. pursuant to which Motihari Town P.S. Case No. 445 of 2016 was registered on 12.07.2016 under Sections 406, 420, 467, 468, 387, 506 read with 34 of the Indian Penal Code against the petitioners.

10. The prosecution case, as per the complainant Chandra Kishore Madan, is that the petitioner no.1 Mukul Chandra Bhushan is his nephew and an agent of J.V.G. Non-Banking Company. On his persuasion, he opened an account in the J.V.G. on 27.03.1997 and deposited Rs.10,000/-. Petitioner no.2 is father of petitioner no.1. He also supported his son in his business. Subsequently, Rs.10,000/- was being taken from him every month



for depositing the same in his account. The petitioner no.1 had assured that upon maturity in the month of September, 1997 the deposited amount shall be refunded with interest @ 17% per annum. He has further alleged that on 25.01.2016 the petitioner no.1 came to his shop and demanded Rs.5,000/- for bringing papers from Patna and said that Rs.60,000/- with interest will be paid to him. He has further complained that he has not received the due amount with interest. When he made a demand for the same, they threatened that he will have to pay Rs. 2 lakh as rangdari.

11. In the prayer portion of the complaint, it has clearly been stated that the complaint be sent to the police station under sub-section (3) of Section 156 of the Cr.P.C for necessary action.

12. There is no averment in the complaint that steps were taken by the complainant either under Section 154(1) or 154(3) of the Cr.P.C for institution of a police case in respect of the offence alleged.

13. Having received the complaint, the learned Chief Judicial Magistrate, Motihari vide order dated 02.06.2016 referred the complaint to the police for investigation.

14. In *Ramdev Food Products (P) Ltd. Vs. State of Gujarat*, since reported in (2015) 6 SCC 439, the Supreme Court observed :



“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 the issuance 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.”

15. In *Sakiri Vasu Vs. State of U.P.*, since reported in **(2008) 2 SCC 409**, the Supreme Court observed :

“... if a person has a grievance that the police station is not registering his FIR under Section 154 CrPC, then he can approach the Superintendent of Police under Section 154(3) CrPC by an application in writing. Even if that does not yield any satisfactory result in the sense that either the FIR is still not registered, or that even after registering it no proper investigation is held, it is open to the aggrieved person to file an application under Section 156(3) CrPC before the learned Magistrate concerned. If such an application under Section 156(3) is filed before the Magistrate, the Magistrate can direct the FIR to be registered and also can direct a proper investigation to be made, in a case where, according to the aggrieved person,



no proper investigation was made. The Magistrate can also under the same provision monitor the investigation to ensure a proper investigation.”

16. In *Priyanka Srivastava* (Supra), taking a serious note of preferring applications under Section 156(3) of the Cr.P.C in a routine and casual manner without any responsibility merely to harass certain persons, the Supreme Court held that remedy available under Section 156(3) of the Cr.P.C is not of routine nature. The Magistrate exercising such power must remain vigilant with regard to the nature of allegations made in the application and not to issue directions without proper application of mind. He has also to bear in mind that sending the matter would be conducive to justice and then he may pass the requisite order.

17. The Supreme Court further held that power under Section 156(3) of the Cr.P.C 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 Cr.P.C. A litigant at his own whim cannot invoke the authority of the Magistrate. A principled and really grieved citizen must have free access to invoke the said power. It protects the citizens but when pervert litigation takes this route to harass the citizens, efforts are to be made to scuttle and curb the same.

18. The Supreme Court further held :-



“In our considered opinion, a stage has come in this country where Section 156(3) CrPC 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 the 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.”

19. The Court further held :-

“... there has to be prior applications under Sections 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 is 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* [(2014) 2 SCC 1 : (2014) 1 SCC (Cri) 524] are being filed. That apart, the learned Magistrate would also be aware of the delay in lodging of the FIR.”

20. It has rightly been pointed out by the learned counsel for the petitioner that institution of the FIR in the present case is contrary to the ratio laid down by the Supreme Court in ***Priyanka Srivastava*** (Supra). The complainant had not filed any affidavit with the complaint that prior to the filing of the complaint steps were taken under Sections 154(1) and 154(3) of the Cr.P.C. The complaint was sent to the police for investigation on the asking of



the complainant without application of judicial mind. In that view of the matter, the initiation of the prosecution itself is an abuse of the process of the Court.

21. The State has opposed the application filed by the petitioner for quashing the FIR on the ground that the investigation has been completed and a report under Section 173(2) of the Cr.P.C has been filed in the court.

22. It would be pertinent to note here that only because investigation of the case has been completed, the petition filed for quashing of the FIR cannot be dismissed.

23. In this regard, it would be relevant to note that recently the Supreme Court in *Anand Kumar Mohatta Vs. State (Govt. of NCT of Delhi)*, since reported in *2019(1) BLJ 128*, ruled that a petition under Section 482 of the Cr.P.C for quashing of FIR is maintainable even if charge-sheet has been submitted in the case. The Court reiterated that the High Court can exercise jurisdiction under Section 482 of the Cr.P.C even when the discharge application is pending with the trial court.

24. In *Anand Kumar Mohatta* (Supra), the Supreme Court has placed reliance on the decision of the Supreme Court in *Joseph Salvaraj A. Vs. State of Gujarat*, since reported in *(2011) 7 SCC 59*, wherein it was observed that “Even if the charge-sheet



had been filed, the learned Single Judge could have still examined whether the offences alleged to have been committed by the appellant were prima facie made out from the complainant's FIR, charge-sheet, documents, etc. or not”.

25. In **Anand Kumar Mohatta** (Supra), the Supreme Court held as under :-

“There is nothing in the words of this Section which restricts the exercise of the power of the Court to prevent the abuse of process of court or miscarriage of justice only to the stage of the FIR. It is settled principle of law that the High court can exercise jurisdiction under Section 482 of Cr.P.C even when the discharge application is pending with the trial court.”

26. The Court further observed :-

“... it would be a travesty to hold that proceedings initiated against a person can be interfered with at the stage of FIR but not if it has advanced, and the allegations have materialized into a charge sheet. On the contrary it could be said that the abuse of process caused by FIR stands aggravated if the FIR has taken the form of a charge sheet after investigation. The power is undoubtedly conferred to prevent abuse of process of power of any court.”



27. Keeping in mind the observations made above and the ratio laid down by the Supreme Court in the cases referred to above, I am of the opinion that the prosecution launched against the petitioner is patently bad.

28. In that view of the matter, the order dated 02.06.2016 passed by the learned Chief Judicial Magistrate, Motihari, East Champaran in Complaint Case No. 1000 of 2016 is quashed. As a result thereof, the FIR of Motihari Town P.S. Case No. 445 of 2016 and the police report submitted under Section 173(2) of the Cr.P.C before the court are also quashed.

29. Resultantly, the entire criminal prosecution in connection with Motihari Town P.S. Case No. 445 of 2016 stands quashed.

30. The application stands allowed.

(Ashwani Kumar Singh, J)

Pradeep/-

AFR/NAFR	NAFR
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