

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Writ Jurisdiction Case No.3293 of 2018

Arising Out of PS. Case No.-85 Year-2018 Thana- VISHNUPAD District- Gaya

Supriya Devi W/o Ajoy Prasad , R/o Vill. Tetaria, P.S.- Barachatti, District- Gaya.

... .. Petitioner

Versus

1. The State of Bihar, through the Home Secretary, Government Of Bihar, Patna
2. The Director General of Police , Patna.
3. The Deputy Inspector General of Police, Magadh Division, Gaya.
4. The Senior Superintendent of Police, Gaya.
5. The Officer In Charge Vishnupad P.S., Gaya.
6. Ajoy Kumar Prasad S/o Bulkan Mahto, R/o Vill.- Tetaria, P.S.- Barachatti, District- Gaya.

... .. Respondents

Appearance :

For the Petitioner/s : Mr. Nand Kishore Prasad Sinha

For the Respondent/s : Ms Prachi Pallavi, A.C. to A.G.

CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH
ORAL JUDGMENT

Date : 13-08-2019

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

2. This application under Article 226 of the Constitution of India has been filed by the petitioner for issuance of a direction to the respondents, especially respondent no.5, the Officer-in-charge of Vishnupad Police Station, Gaya to investigate and submit charge-sheet against the accused persons in connection with Vishnupad P.S. Case No. 85 of 2018 registered under Sections 323, 324, 494 and 379 of the Indian Penal Code.



3. It is submitted by the learned counsel for the petitioner that the petitioner had initially filed a complaint in the court of Chief Judicial Magistrate, Gaya vide Complaint Case No. 505 of 2018. In the complaint, a prayer was made to send the same to the Mahila Police Station for investigation under Section 156(3) of the Code of Criminal Procedure (for short 'Cr.P.C'). Allowing the prayer of the petitioner, the learned Chief Judicial Magistrate sent the complaint to the police for investigation whereafter the first information report (for short 'FIR') was registered on 12.04.2018 and investigation was taken up. He submitted that inspite of lapse of over 16 months, the police have not yet completed the investigation of the case. He has further contended that if the accused persons including the petitioner's husband are not arrested and put on trial, there would be complete miscarriage of justice.

4. Per contra, learned counsel appearing for the State submitted that the police have complied the direction given by the court. They have immediately instituted the FIR against the accused persons. They are investigating the case. In case the allegations made in the FIR would be found true, the accused persons would certainly be sent up for trial. In case, the allegations are found not true, final report would be filed before the court. She



contended that the prayer of the petitioner to direct the police to submit charge-sheet is misconceived. After the investigation would be completed, the police are expected to file their report under Section 173(2) of the Cr.P.C, which may be either in the form of closer report or charge-sheet.

5. Having heard learned counsel for the parties and carefully perused the FIR, as contained in Annexure-1 to the application, I find that the petitioner had initially filed a complaint case in the court of Chief Judicial Magistrate, Gaya vide Complaint Case No. 505 of 2018 on 31.03.2018. In the complaint, she has alleged that she was married to Ajay Prasad on 22.06.2004. Her father had given Rs. 2 lakhs in cash and articles worth Rs.1 lakh in gift at the time of marriage. Her husband and his relatives subjected her to cruelty on regular basis since the date of marriage. Being left with no option, she filed complaint case No. 53 of 2017 in the court of Chief Judicial Magistrate, Sherghatti under Section 498-A of the Indian Penal Code against her husband and his relatives. Her husband got bail in that case from the High Court on 10.08.2017. Thereafter, he married another lady, namely, Sinki Kumari. Upon coming to know about the said marriage, on 17.03.2018, at about 10.00 a.m. when she came to her matrimonial home along with the witnesses, her husband started hurling abuses.



He threatened her to immediately leave the place or else she would be killed. When she protested, he called on phone his other relatives, who reached within 20 minutes. Thereafter, he started beating her with *danda*. She immediately informed the Mahila Police Station regarding the occurrence and also gave her written report, but no action was taken on her report.

6. She has further alleged that her husband and his relatives are repeatedly threatening her of dire consequences. She contended that since the police did not take any action on her written report, she is filing the complaint before the court.

7. In the prayer portion, the complainant urged that her complaint should be sent to the police for investigation in exercise of powers conferred under Section 156(3) of the Cr.P.C.

8. Having noticed the complaint of the petitioner, when I look to the pleadings of the petitioner in the instant writ petition, I find that the petitioner is not satisfied with the quality and slow speed of the investigation. There cannot be any dispute that an investigation into a cognizable offence should be fair, impartial and prompt.

9. The police authorities exercise statutory power under Section 156 of the Cr.P.C to investigate the case. In a case instituted by the police, when investigation is conducted, it may



culminate into a report under Section 169 of the Cr.P.C, ordinarily called a final report, or a report under Section 170 of the Cr.P.C, ordinarily called a charge-sheet, but the report under Section 169 or Section 170 of the Cr.P.C is required to be submitted to the court in the form and manner provided under Section 173 of the Cr.P.C.

10. It is well settled position in law that investigation into a cognizable offence is the exclusive domain of the police. At the stage of investigation, the court has no say. The role of the court would start after the police would submit their report under Section 173 of the Cr.P.C.

11. It is equally well settled that the police cannot sit tight over the investigation of a case after registering the FIR.

12. A sensitive and committed investigating agency is indispensable in criminal justice system. An inordinate and unexplained delay in investigation of a case may give an occasion to doubt fairness in investigation.

13. However, mere delay in investigation cannot be made a ground for directing the police to submit charge-sheet against the accused in the case.

14. As far as the case in hand is concerned, there is yet another aspect. The direction issued by the learned Chief Judicial



Magistrate, Gaya to the police in exercise of powers conferred under Section 156(3) of the Cr.P.C pursuant to which the FIR of Vishnupad P.S. Case No. 85 of 2018 has been registered under Sections 323, 324, 494 and 379 of the IPC and investigation has been taken up is in the teeth of the decision rendered by the Supreme Court in *Priyanka Srivastava Vs. State of U.P.*, since reported in *(2015) 6 SCC 287*.

15. In terms of the decision of the Supreme Court in *Priyanka Srivastava*'s case, an application under Section 156(3) of the Cr.P.C can be filed by an aggrieved person due to non-registration of FIR only if steps under Sections 154(1) and 154(3) of the Cr.P.C have been taken in respect of a cognizable offence. Further, the requirement of law is that both aspects should be clearly spelt out in the application and necessary document to that effect should be filed along with the complaint under Section 200 of the Cr.P.C. Furthermore, the complainant is required to file an affidavit in support of her/his application under Section 156(3) of the Cr.P.C.

16. After noticing that in the instant case except a bald statement that the petitioner submitted a written report to the Mahila Police Station, there is nothing to suggest that steps under Sections 154(1) and 154(3) of the Cr.P.C were taken by her for



registration of the FIR, the Court called upon learned counsel for the petitioner and the State to address as to why the FIR, which has been instituted in complete violation of the ratio laid down by the Supreme Court in *Priyanka Srivastava* (Supra) be not quashed.

17. Mr. N.K.P. Sinha, learned counsel appearing for the petitioner submitted that there is no illegality in the institution of the FIR as the same has been instituted pursuant to the direction of the learned Chief Judicial Magistrate. The provisions prescribed under Section 156(3) of the Cr.P.C confers power upon the Magistrate to issue direction to the police to investigate the case. He contended that the aforesaid provision confers power upon the Magistrate to direct investigation at pre-cognizance stage.

18. Mr. Sinha, however, admitted that there is no averment in the complaint that the petitioner had taken steps under Section 154(3) of the Cr.P.C upon refusal by the Officer-in-charge of the Mahila Police Station to institute an FIR pursuant to the written report submitted by the petitioner. He also admitted that the application under Section 156(3) of the Cr.P.C was not supported by an affidavit by the petitioner.

19. Ms Prachi Pallavi, learned Assistant Counsel to the Advocate General also admitted that the order passed by the learned Chief Judicial Magistrate in exercise of powers conferred



under Section 156(3) of the Cr.P.C is contrary to the mandate of the Supreme Court in the **Priyanka Srivastava**'s case.

20. In **Priyanka Srivastava** (Supra), the Supreme Court held that *“issuing a direction stating “as per the application” to lodge an FIR creates a very unhealthy situation in society and also reflects the erroneous approach of the learned Magistrate. It also encourages unscrupulous and unprincipled litigants ...”*

21. The Court further held that *“ 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 fellow citizens, efforts are to be made to scuttle and curb the same”.*

22. After saying so, the Court held that *“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”. (emphasis mine)

23. The Court further observed that “*we have already indicated that 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.” (emphasis mine)

24. Keeping in mind the aforesaid proposition of law laid down by the Supreme Court in **Priyanka Srivastava** (Supra), when I look to the facts of the present case, I find that though there is statement in the complaint that a prior application under Section 154(1) of the Cr.P.C was filed by the petitioner, there is no averment that on refusal of the Officer-in-charge of the police station to register an FIR, steps were taken under Section 154(3) of the Cr.P.C. The petitioner has also not filed any document with the complaint to show that prior applications under Sections 154(1) and 154(3) of the Cr.P.C were filed before the S.H.O. and the Superintendent of Police respectively. He has also not filed any affidavit before invoking the jurisdiction under Section 156(3) of the Cr.P.C. The direction has been issued by the learned Chief Judicial Magistrate under Section 156(3) of the Cr.P.C on mere asking of the petitioner. The learned Chief Judicial Magistrate has not made any effort to verify from the complainant as to whether prior applications under Sections 154(1) and 154(3) were made



while filing the petitioner under Section 156(3) of the Cr.P.C. Apparently, the learned Chief Judicial Magistrate has completely ignored the ratio laid down by the Supreme Court while issuing direction to the police to investigate the allegations made in the complaint. The order under Section 156(3) of the Cr.P.C has been passed in the most casual and mechanical manner.

25. The learned Chief Judicial Magistrate has failed to appreciate that Article 141 of the Constitution of India, which lays down that the law declared by the Supreme Court is binding upon all the courts within the territory of India.

26. In *Union of India Vs. Raghubir Singh*, since reported in AIR 1989 SC 1933, the Supreme Court held that the binding precedent is necessary to be followed in order to maintain consistency in judicial decision and enable an organic development of law. It also provides an assurance to an individual as to the consequences of transactions forming part of his daily affairs.

27. In *Mamleshwar Prasad Vs. Kanhaiya Lal*, since reported in **AIR 1975 SC 907**, the Supreme Court held as under :-

“Certainty of the law, consistency of rulings and comity of courts — all flowering from the same principle — converge to the conclusion that a decision once rendered must later bind like cases.



We do not intend to detract from the rule that, in exceptional instances, whereby obvious inadvertence or oversight a judgment fails to notice a plain statutory provision or obligatory authority running counter to the reasoning and result reached, it may not have the sway of binding precedents. It should be a glaring case, an obtrusive omission.”

28. The Supreme Court deprecated the practice of not following the settled legal proposition and unsettling the legal issue in *Dwarikesh Sugar Industries Ltd. Vs. Prem Heavy Engineering Works (P) Ltd*, since reported in *AIR 1997 SC 2477*, observing as under :-

“When a position, in law, is well settled as a result of judicial pronouncement of this Court, it would amount to judicial impropriety to say the least, for the subordinate courts including the High Courts to ignore the settled decisions and then to pass a judicial order which is clearly contrary to the settled legal position. Such judicial adventurism cannot be permitted and we strongly deprecate the tendency of the subordinate courts in not applying the settled principles and in passing whimsical orders which necessarily has the effect of granting wrongful and unwarranted relief to one of the parties. It is time that this tendency stops.”



29. In *Sundarjas Kanyalal Bhatija v. Collector, Thane*, since reported in *AIR 1990 SC 261*, the Supreme Court observed as under :-

“One must remember that pursuit of the law, however glamorous it is, has its own limitation on the Bench. In a multi-Judge court, the Judges are bound by precedents and procedure. They could use their discretion only when there is no declared principle to be found, no rule and no authority.”

30. Apart from the position discussed above with regard to the binding nature of the judicial precedent, the judicial discipline requires that the ratio laid down by the superior court should be followed by the subordinate courts.

31. By virtue of the provisions of Article 227 of the Constitution of India, this Court has been vested with power of superintendence over all the courts and tribunals in its respective jurisdiction.

32. Since the learned Chief Judicial Magistrate, Gaya has completely overlooked the decision of the Supreme Court in *Priyanka Srivastava*'s case while directing for investigation by the police in exercise of powers conferred under Section 156(3) of the Cr.P.C pursuant to which the FIR in question has been registered, I am of the opinion that allowing the FIR and the ongoing



investigation to continue would amount to perpetuating an illegality committed by the learned Chief Judicial Magistrate and would promote judicial indiscipline.

33. In *Zandu Pharmaceutical Works Ltd. v. Mohd. Sharaful Haque*, since reported in *AIR 2005 SC 9*, the Supreme Court observed as under :-

“It would be an abuse of process of the court to allow any action which would result in injustice and prevent promotion of justice. In exercise of the powers, court would be justified to quash any proceeding if it finds that initiation/continuance of it amounts to abuse of the process of court or quashing of these proceedings would otherwise serve the ends of justice. ...”

34. Since I have already held that the FIR of the case in question was instituted on the basis of an illegal order passed by the learned Chief Judicial Magistrate, in the opinion of this Court, allowing the prosecution to continue further on the basis of such an FIR would certainly result in injustice and would prevent promotion of justice. It would also amount to promoting judicial impropriety as no subordinate court including the High Court can ignore the settled decision of the Supreme Court and then pass a judicial order contrary to the settled legal position.



35. In view of the discussions made above, the order passed by the learned Chief Judicial Magistrate, Gaya in Complaint Case No. 505 of 2018 whereby the complaint was referred to the police for investigation is hereby quashed. Consequently, the FIR of Vishnupad P.S. Case No. 85 of 2018 dated 12.04.2018 is also quashed.

36. The writ petition stands dismissed.

(Ashwani Kumar Singh, J)

Pradeep/-

AFR/NAFR	AFR
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