

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.4354 of 2017

Arising Out of PS. Case No.-285 Year-2015 Thana- SAKRA District- Muzaffarpur

Vinod Mahto, s/o late Sukhnandan Mahto, r/o-Ganipur Bejha, P.S.-Sakra,
Distt.-Muzaffarpur.

... .. Petitioner/s

Versus

1. The State of Bihar
2. Sanjay Kumar Ram, Advocate, s/o Late Krishnadeo Ram, village-Alisarai
@ Hasanpur Sarai, P.O.-Machhahi, P.S. Sakra, Distt.-Muzaffarpur.

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr.Amresh Kumar Sinha
For the Opposite Party/s : Mr.Binay Krishna

CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI
ORAL ORDER

4 21-06-2019 Heard learned counsel for the petitioner, learned
counsel for the O.P. No.2 as well as learned Additional Public
Prosecutor.

Petitioner, who happens to be an accused in
connection with Sakra P. S. Case No.285 of 2015 has challenged
the order dated 19.12.2016 passed by the learned 3rd Additional
Sessions Judge-cum-Special Judge, S.C./S.T. Act, Muzaffarpur,
whereby and whereunder the learned lower Court had taken
cognizance of an offence punishable under Sections 341, 323,
504 of the I.P.C. as well as Section 3(1)(X) of the S.C./S.T.
(Prevention of Atrocities) Act against the petitioner.

Annexing the different F.I.Rs., complaint petition, it
has been submitted at the end of the petitioner that O.P. No.2,



who belongs to privilege caste has adopted a novel method and further, being an advocate took additional privilege in getting the sympathy of the Court and used to file cases against an innocent putting apart from other allegation, relating to that being a member of Scheduled Caste, he has been abused, got the case compromised subsequently after realizing hefty money and present litigation is one of its series. To substantiate such plea referred Annexure-2 series, certified copy of Sakra P. S. Case No.204 of 2013, Sakra P. S. Case No.285 of 2015, Mithanpura P. S. Case No.216 of 2006. It has also been submitted that O.P. No.2 happens to be an accused relating to Sakra P. S. Case No.120 of 2004 (Annexure-4) on account of recovery of illegal firearm. It has also been submitted that O.P. No.2 being an advocate, legal practitioner ought to have been known with the direction so laid down by the Hon'ble Apex Court in ***Mrs. Priyanka Srivastava and another vs. State of U.P. and others reported in 2015 (3) P.L.J.R. 78 (SC)***, whereunder not only an affidavit was required in support of the allegation before having complaint sent to the police in accordance with Section 156(3) of the Cr.P.C. and further, would have divulged that with similar kind of allegation, the O.P. No.2 had drawn up cases against the others so that the Court would have been in a position to have a



preliminary enquiry with regard to authenticity of the assertion/allegation at the end of the O.P. No.2. This happens to be an intentional act at the end of the O.P. No.2 by which the Court has been kept in dark and by such activity, snatched the order of the Court on account of which, the complaint petition no.2180 of 2015 was sent to the local police for registration and investigation and on the basis thereof, Sakra P. S. Case No.285 of 2015 has been registered followed with an investigation as well as submission of police report resulting the order impugned. That means to say, the edifice of whole prosecution is based upon illegality, in contravention of the principle laid down by the Hon'ble Apex Court and so, the subsequent event including the order impugned is fit to be set aside.

The learned counsel for Opposite Party No.2 while supporting the conduct of her client has submitted that whenever the O.P. No.2 was humiliated by a Section on account of coming from lower strata of the society, in order to preserve his prestige, cases have been filed. So, the submission of the learned counsel for the petitioner that all the proceedings happens to be malafide is not correct. However, fairly submits that the direction so given by the Hon'ble Apex Court in Mrs. Priyanka Srivastava and another (supra) has not been followed,



so it is a fit case wherein the matter could be remanded for getting the defect removed.

The learned Additional Public Prosecutor submitted that the order impugned would not survive.

Opposite Party No.2 filed complaint petition showing the date of occurrence as 07.08.2015, on 10.08.2015 with an allegation that he used to visit Muzaffarpur Civil Court from his house. On the alleged date and time of occurrence, when he reached Sujawalpur Chowk, Vinod Mahto (Petitioner) along with five others stopped him and then, abused him that being a Chamar, you are doing the professional work, which they will not allow, they will kill him. They all took out pistol, snatched away Rs.5,000/- and then, all left. Admittedly, neither there happens to be disclosure in the aforesaid complaint petition that he had filed complaint petition against others also at an earlier occasion nor there happens to be an affidavit.

In *Mrs. Priyanka Srivastava and another (supra)*, the Hon'ble Apex Court had an occasion to deal with not only the proprietary of Section 156(3) of the Cr.P.C. rather the pros and cons so involved there with and that being so, it has been observed:-

"25. Issuing a direction stating "as per the application" to lodge an FIR creates a very



unhealthy situation in the society and also reflects the erroneous approach of the learned Magistrate. It also encourages the unscrupulous and unprincipled litigants, like the respondent no.3, namely, Prakash Kumar Bajaj, to take adventurous steps with courts to bring the financial institutions on their knees. As the factual exposition would reveal, he had prosecuted the earlier authorities and after the matter is dealt with by the High Court in a writ petition recording a settlement, he does not withdraw the criminal case and waits for some kind of situation where he can take vengeance as if he is the emperor of all he surveys. It is interesting to note that during the tenure of the appellant No.1, who is presently occupying the position of Vice-President, neither the loan was taken, nor the default was made, nor any action under the [SARFAESI Act](#) was taken. However, the action under the [SARFAESI Act](#) was taken on the second time at the instance of the present appellant No.1. We are only stating about the devilish design of the respondent No.3 to harass the appellants with the sole intent to avoid the payment of loan. When a citizen avails a loan from a financial institution, it is his obligation to pay back and not play truant or for that matter play possum. As we have noticed, he has been able to do such



adventurous acts as he has the embedded conviction that he will not be taken to task because an application under [Section 156\(3\)](#) Cr.P.C. is a simple application to the court for issue of a direction to the investigating agency. We have been apprised that a carbon copy of a document is filed to show the compliance of [Section 154\(3\)](#), indicating it has been sent to the Superintendent of police concerned.

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 most crucial aspect is incorporated under Para-32, for better appreciation, the same is also quoted below:-

“32. A copy of the order passed by us be sent to the learned Chief Justices of all the High Courts by the Registry of this Court so that the High Courts would circulate the same amongst the learned Sessions Judges who, in turn, shall circulate it among the learned Magistrates so that they can remain more vigilant and diligent while exercising the power under [Section 156\(3\)](#) Cr.P.C.”

The judgment was delivered on 19.03.2015 and as per Para-32, the copy of the order has been transmitted to the Registrars of the respective High Courts with a direction that all



the Courts of Chief Judicial Magistrates should be served upon with a copy of the order for proper compliance. The Apex Court also quashed the proceeding.

Being an advocate, it would have been within the knowledge of the O.P. No.2 and in likewise manner, the learned lower Court should also have taken into consideration, failed. That being so, direction of the Apex Court has been violated.

Consequent thereupon, the order impugned is set aside. Petition is allowed.

(Aditya Kumar Trivedi, J)

vikash/-

U		T	
---	--	---	--

