

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Writ Jurisdiction Case No.1145 of 2019

Arising Out of PS. Case No.-308 Year-2016 Thana- GARDANIBAG District- Patna

Sanjay Pathak, S/o Late Siddhanath Pathak, Resident of Village- Devakali,
P.S.- Dhanarua, District- Patna.

... .. Petitioner

Versus

1. The State of Bihar through the Principal Secretary, Department of Home, Bihar, Patna.
2. The Director General of Police, Bihar, Patna.
3. The Inspector General of Police, Patna Range, Patna.
4. The Senior Superintendent of Police, Patna.
5. The Superintendent of Police, City, Patna.
6. The Deputy Superintendent of Police, Sachivalaya, Patna.
7. The S.H.O., Gardanibag Police Station, Gardanibag, Patna.

... .. Respondents

Appearance :

For the Petitioner	:	Mr. Bhola Prasad, Advocate Mr. Mukesh Kumar Jha, Advocate
For the Respondents-State:	:	Md. Nadim Seraj, GP-5

CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH
ORAL JUDGMENT

Date : 14-08-2019

Heard Mr. Bhola Prasad, learned counsel for the petitioner and Mr. Nadim Seraj, learned counsel for the respondents.

2. This application under Article 226 of the Constitution of India has been filed by the petitioner for directing the respondents to conduct fair investigation in Gardanibagh P.S. Case No.308 of 2016 registered under Sections 341, 323, 379, 447, 452, 420, 467, 468 and 471 of the Indian Penal Code and to take necessary action against the FIR named accused persons. The



petitioner has further prayed to direct the respondents to submit charge-sheet before the court on completion of investigation.

3. The petitioner had initially filed Complaint Case No.3726 of 2016 in the court of Chief Judicial Magistrate, Patna, which was forwarded by the learned Chief Judicial Magistrate to the Station House Officer (for short 'SHO') of Gardanibagh Police Station, Patna for investigation in exercise of powers conferred under Section 156(3) of the Code of Criminal Procedure (for short 'CrPC') pursuant to which Gardanibagh P.S. Case No.308 of 2016 was registered and investigation was taken up.

4. Mr. Bhola Prasad, learned counsel appearing for the petitioner submitted that though the First Information Report (for short 'FIR') was instituted on 28.12.2016, the police have not taken any steps so far to apprehend the named accused persons. He contended that till date the investigation of the case is incomplete. According to him, the investigating agency is not committed and sensitive to the investigation of the case.

5. On the basis of the aforesaid submissions, his contention is that a direction should be issued to the respondents in order to streamline the investigation of the case so that action against the accused persons named in the FIR be taken and a report under Section 173 of the CrPC is submitted in the court without any further delay.



6. *Per contra*, Mr. Nadim Seraj, learned counsel appearing for the State submitted that there is no truth behind the allegation made by the petitioner that the police are not sensitive and committed to their duty as far as the investigation of the case in question is concerned. He submitted that an investigation into a cognizable offence is the exclusive domain of the police. According to him, the prayer of the petitioner for taking action against the FIR named accused persons is totally misconceived. Many a times false case are instituted with ulterior motive by disgruntled complainant. In such cases, action against the accused persons named in the complaint leading to institution of FIR is not required to be taken. The action of the police would depend on the outcome of the investigation. Hence, he pleaded that at this stage no direction is required to be given to the respondents.

7. Be it noted here that learned counsel for the petitioner has conceded that prior to the filing the application before this Court, the accused persons named in the FIR had moved for pre-arrest bail, which was allowed by this Court pursuant to which they are on bail.

8. While hearing the present application the court noticed that the complaint filed by the petitioner was forwarded to the SHO of Gardanibagh Police Station for investigation under Section 156(3) of the CrPC in complete breach of the ratio laid down



by the Supreme Court in *Priyanka Srivastava vs. State of Uttar Pradesh and Ors. [(2015) 6 SCC 287]*.

9. Having noticed that the petitioner had not filed any affidavit in support of his application under Section 156(3) of the CrPC that prior applications under Sections 154(1) and 154(3) of the CrPC had been filed before invoking the jurisdiction under Section 156(3) of the CrPC, a query was made as to why the FIR in question be not quashed.

10. In reply to the query made by the Court, learned counsel for the petitioner submitted that the accused persons have not approached this Court for quashing the FIR. Hence, it would not be proper to quash the FIR. He contended that the application has been filed by the petitioner seeking prompt and fair investigation and it would cause great prejudice to the petitioner if the FIR itself is quashed. He has further contended that as far as the requirement of filing an affidavit in support of the fact that prior steps under Sections 154(1) and 154(3) of the CrPC had been taken is not mandatory in law. The interpretation given by the Supreme Court in **Priyanka Srivastava's** case can not be made applicable in all the cases. He has further contended that even otherwise the defect in filing the complaint can be subsequently cured by filing an affidavit in this regard.



11. On the other hand, learned counsel for the State submitted that if the Court comes to a conclusion that law laid down by the Supreme court has not been followed and the direction given by the learned Chief Judicial Magistrate under Section 156(3) of the CrPC is in complete breach of the ratio laid down by the Supreme Court in a case, in exercise of jurisdiction under Article 226 of the Constitution of India, the writ court would be fully justified in quashing the FIR.

12. He has further contended that even *suo motu* this Court can exercise supervisory jurisdiction conferred under Article 227 of the Constitution of the India and quash an illegal order passed by the subordinate court.

13. Having heard the parties and perused the record, I find that the petitioner filed Complaint Case No.3726 of 2016 in the court of Chief Judicial Magistrate, Patna alleging therein that 22 decimal land of Khata no.260, Plot No.306 situated in the village- Dev Kali belonging to the petitioner was given to one Dayali Zamadar in the year 2006 on *Batai* and every year Dayali Zamadar used to pay certain amount in lieu of cultivating the aforesaid land of the petitioner. Since the petitioner was in urgent need of money, he entered into agreements for sale of immovable property with one Sudhanshu Paswan and one Suraj Kumar on 01.09.2016 and 14.10.2016 respectively. When Sudhanshu Paswan and Suraj Kumar



went for measurement of the land in question, Dayali Zamadar stopped him and said that he had purchased the land through registered sale deed. Thereafter, on information supplied by Sudhanshu Paswan, he inquired into the matter and came to know that by playing fraud, Dayali Zamadar got a sale deed executed in favour of his wife. The said sale deed was executed by one Mukesh Bind and one Kaushal is the identifier whereas one Satya Narayan is the deed writer. The petitioner has further alleged that on 17.11.2016, Dayali Zamadar came at his residence at Anishabad and abused and assaulted him as well as his brother and took away Rs. 12,000/- cash and threatened them.

14. On perusal of the complaint, I find that in paragraph nos. 9 and 10, the petitioner has stated that he went to the police station and informed about the occurrence of offence, but no FIR was registered whereafter he submitted a written report to the Superintendent of Police. I further find that in the prayer portion, the complainant has made a request that the complaint be sent to the police for investigation in exercise of powers conferred under Section 156(3) of the CrPC.

15. In the complaint, the petitioner has mentioned the date of occurrence between 15.03.2010 and 17.11.2016. However, the complaint has been filed on 30.11.2016.



16. True it is that a vague statement has been made in para 9 and 10 that an information in respect of the occurrence of offence was given in the police station and a written report was submitted to the Superintendent of Police, it is not mentioned when the matter was reported to the SHO of the police station or when the written report was sent to the Superintendent of Police. It is also not mentioned as to whether the written report was given to the Superintendent of Police in person or was sent through post. The complainant has also not appended copy of the report submitted to the SHO of the police station or to the Superintendent of Police.

17. 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.

18. The police authorities exercise statutory power under Section 156 of the CrPC 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 CrPC, ordinarily called a final report, or a report under Section 170 of the CrPC, ordinarily called a charge-sheet, but the report under Section 169 or



Section 170 of the CrPC is required to be submitted to the court in the form and manner provided under Section 173 of the CrPC.

19. 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 CrPC.

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

21. A sensitive and committed investigating agency is the need of the hour. It is indispensable to the criminal justice system.

22. Having said so, when I look to the direction issued by the learned Chief Judicial Magistrate, Patna whereby complaint was sent to the police for investigation in exercise of powers conferred under Section 156 (3) of the CrPC, I find that the same was in teeth of the order passed by the Supreme Court in ***Priyanka Srivastava*** (Supra).

23. 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 ...*”



24. 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*”.

25. 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)

26. 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)

27. As indicated above, in the instant case, though there is a reference in the complaint that an information to the SHO of the police station was given and a written report was submitted to the Superintendent of Police, the averments are completely vague. It



has not been spelt out in the application as to when the petitioner went to the police station and submitted report in respect of the offences alleged. It is also not stated as to when the information was given to the Superintendent of Police. It is also not known as to whether the information stated to have given to the police was given orally or in writing or by post. The petitioner has not filed any affidavit before invoking the jurisdiction under Section 156(3) of the CrPC. He has not filed any document with the complaint to show that prior applications under Sections 154(1) and 154(3) of the CrPC were filed before the SHO and the Superintendent of Police respectively.

28. It would also be manifest from the pleadings of the parties that the veracity of the allegation specially the statements with respect to information given to the police was never verified by the learned Chief Judicial Magistrate. The application of the petitioner for sending the complaint to the police in exercise of powers conferred under Section 156(3) of the CrPC was allowed on mere asking of the petitioner. The order passed by the learned Chief Judicial Magistrate whereby the complaint was sent to the police for investigation is completely in breach of the mandate of law laid down by the Supreme Court in *Priyanka Srivastava* (Supra). The said order has caused grave miscarriage of justice, as in consequence



of the said order the police have registered FIR and took up investigation of the case.

29. 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.

30. 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.

31. 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.”



32. 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.”

33. 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.”

34. 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.

35. 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.

36. Since the learned Chief Judicial Magistrate, Patna 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 CrPC 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.

37. 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. ...”

38. 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.

39. Keeping in mind the ratio laid down by this Court in ***Priyanka Srivastava*** (*supra*) and the discussions made hereinabove, the order passed by the learned Chief Judicial Magistrate, Patna whereby Complaint Case No.3726 of 2016 was forwarded to the SHO of Gardanibagh Police Station for investigation under Section 156(3) of the CrPC is quashed. Consequently, the FIR of Gardanibagh P.S. Case No.308 of 2016 is also quashed.



40. The writ application filed by the petitioner stands dismissed.

(Ashwani Kumar Singh, J.)

Sanjeet/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	17.09.2019
Transmission Date	17.09.2019

