

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Writ Jurisdiction Case No.319 of 2017

Arising Out of PS. Case No.-1108 Year-2014 Thana- PATNA COMPLAINT CASE District-
Patna

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Vikas Kumar Son of Late Baleshwar Sharma, Resident of Road No. 25 A,
Rajeev Nagar, P.S.- Rajeev Nagar, District- Patna.

... .. Petitioner/s

Versus

1. The State Of Bihar Through Senior Superintendent Of Police, Patna
2. The Senior Superitendent of Police , Patna.
3. Jhular Devi, Wife of Nandlal Ram, Resident of Mohalla Kaimasikoh Bazr Naharpar, P.S.- Chawk, District- Patna at present Sahid Bhagt Singh Path, Bajrangpuri, Near Pyarelal Bag, P.S.- Chowk, District- Patna.
4. Raj Kumar Kanodia, Son of Late Baidyanath Kanodia, Resident of Pua Gali, Patna City, P.S.- Chowk, District- Patna.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr.Satyam Shivam Sundaram, Adv.
For the State	:	Mr.Sheo Shankar Prasad, SC-8
For the Respondent no.3:	:	Mr. Amit Narayan, Adv.

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CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL ORDER

4 27-02-2020 This application has been preferred for setting aside the order dated 26.02.2016 passed by the learned S.D.J.M., Patna city in Complaint Case No.1108 of 2014 (Jhullar Devi Vs. Ranju Kumar & Others) whereby and whereunder the learned S.D.J.M. has taken cognizance of the offence under Sections 323, 354, 379, 427, 504, 506 and 147 of the Indian Penal Code and decided to issue summons to the accused persons including the petitioner.

Learned counsel for the petitioner has argued a short point for purpose of setting aside of the impugned order. It is his



submission that although the complaint itself was filed with malafide intention at the instance of Raj Kumar Kanodia who is himself informant of another case against the petitioner being Alamganj P.S. Case No.274 of 2013, the present case may be disposed of considering the submission of the petitioner that the learned Magistrate while taking cognizance and issuing summons has failed to follow the mandate of the Hon'ble Supreme Court in the case of **Priyanka Srivastava & Anr. Vs. State of Uttar Pradesh & Ors.** reported in **(2015) 6 SCC 287**.

Learned counsel has taken this Court through the statements made in the complaint petition and submits that a bare perusal thereof would show that there is no compliance with the provision of Section 154(1) and 154(3) Cr.P.C. and if it is so in terms of paragraph 31 of the judgment of the Hon'ble Apex Court in the case of Priyanka Srivastava (supra), the learned Magistrate should have before passing the order taking cognizance and issuance of summons considered this aspect of the matter.

Learned counsel for the respondent no.3 has though opposed this application to the best of his efforts but at the end agrees after perusal of the complaint petition that the complaint nowhere reflects compliance of the provision of Section 154(1)



and 154(3) Cr.P.C. Learned counsel has gone through paragraph 31 of the judgment of the Hon'ble Apex Court in the case of Priyanka Srivastava (supra) and to that extent he admits that the complaint does not disclose any observance of the mandate of the Hon'ble Apex Court.

Having heard learned counsel for the petitioner, State and the respondent no.3, this Court is of the considered opinion that the impugned order in so far as it relates to the petitioner is fit to be quashed on the ground of non-observance of the procedures as laid down by the Hon'ble Supreme Court in the case of Priyanka Srivastava (supra). The relevant paragraph 31 of the judgment from the case of Priyanka Srivastava (supra) is quoted hereunder for a ready reference:-

“31. 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.”

In this case, admittedly, the procedures as stated hereinabove and observed by the Hon’ble Apex Court has not been followed. Thus, the impugned order is bad in law and is hereby set aside. Since the impugned order has been set aside on this ground alone, this Court is not going into the plea of the malafide prosecution in the present case.

This application is, thus, allowed and the impugned order in so far as relates to the petitioner is hereby quashed.

(Rajeev Ranjan Prasad, J)

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