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HIGH COURT OF CHHATTISGARH, BILASPUR**Cr.M.P. No. 66 of 2020**

Ashwini Tiwari, S/o late Shri Jeevan Prasad Tiwari, aged about 45 years, R/o Fundurdihari, Post Fundurdihari, P.S. Gandhi Nagar, Ambikapur, District Ambikapur (C.G.) (Accused)

---- Petitioner**Versus**

Narad, S/o Shri Fekuram, aged about 48 years, Caste- Harijan, R/o Village- Chakdehi, Police Chowki- Balangi, Police Station Raghunath Nagar, Tahsil – Wadrafnagar, District – Balrampur- Ramanujganj (C.G.) (Complainant)

---- Respondent.

For Petitioner	: Mr. Roop Naik, Advocate.
For Respondent	: None present, though served.

Hon'ble Shri Justice Sanjay K. Agrawal**Order On Board****04/12/2020**

(1) The petitioner herein takes exception to the impugned order dated 10.07.2019 passed by Judicial Magistrate, First Class, Wadrafnagar, District Balrampur – Ramanujganj by which the respondent's / complainant application under Section 156 (3) of the Cr.P.C. has been allowed and Court directed for registration of the FIR and consequent investigation against the petitioner.

(2) Learned counsel appearing for the petitioner would make a solitary submission that complainant's / respondent application under Section 156 (3) of the Cr.P.C. was not supported by affidavit , therefore, in light of principles of law laid down by the

Supreme Court in the matter of **Priyanka Srivastava v. State of Uttar Pradesh**¹, complaint filed by the complainant could not have been entertained, as such, impugned order deserves to be set aside.

(3) None for the respondent, though served.

(4) I have heard learned counsel appearing for the petitioner and considered his submissions and went through the record of proceedings under Section 156(3) of the Cr.P.C.

(5) The Supreme Court in the matter of **Priyanka Srivastava** (supra) laid down the duty and approach of the Magistrate while exercising the power under Section 156(3) of the CrPC and highlighted the preconditions to be satisfied while entertaining the application under Section 156(3) of the CrPC. It has also been held that power under Section 156(3) of the CrPC warrants application of judicial mind and it has to be supported by an affidavit. It was observed as under :-

“29. 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.

30. 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

1 (2015) 6 SCC 287

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.

31. 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. ”

(6) The principle of law laid down in the matter of **Priyanka Srivastava** (supra) has been followed with approval by the Supreme Court in **Vikram Johar v. State of Uttar Pradesh**² in which Their Lordships have noticed the potentiality of misuse of Section 156(3) to harass those, who are entrusted with various statutory functions and emphasized the need that application under Section 156(3) has to be supported by an affidavit so that the person making allegation should take responsibility of what they have said in the complaint.

(7) In the instant case, from the careful perusal of the record of the court below would show that affidavit in support of complaint under Section 156 (3) of the Cr.P.C.

2 AIR 2019 SC 2109

was not filed, as such, the impugned order passed by learned trial Magistrate granting application under Section 156(3) of the Cr.P.C. is in teeth of the decision rendered by the Supreme Court in the matter of **Priyanka Srivastava (supra)**.

(8) Consequently, impugned order dated 10.07.2019 is hereby set aside. However, respondent/complainant is at liberty to proceed in accordance with law.

(9) Cr.M.P. is allowed to the extent indicated hereinabove.

Sd/-

(Sanjay K. Agrawal)
Judge

D/-

