

HIGH COURT OF CHHATTISGARH AT BILASPUR**CRMP No. 272 of 2014**

1. Parwati Sahish W/o Shri Ramesh Sahish, Aged about 38 years, President, Nagar Panchayat Saragaon.
2. G.D. Dhahariya S/o Shri Sadaram Dhahariya, Aged 52 years, Chief Municipal Officer, Nagar Panchayat Saragaon.

Both are R/o Village Saragaon, Police Station Saragaon, Tahsil Champa, District Janjgir-Champa, Civil and Revenue District Janjgir-Champa, Chhattisgarh.

---Petitioners

Versus

Bhuwan Bhaskar Yadav S/o Mohanlal Yadav, Aged 40 years, R/o Village Saragaon, Tahsil Champa, District Janjgir-Champa, Chhattisgarh.

--- Respondent

For Petitioner :- Mr. Sourabh Sahu, Advocate

For Respondent :- Mr. Virendra Verma, Advocate

Hon'ble Shri Justice Sanjay K. Agrawal

Order on Board

26/11/2020

1. The petitioners herein take exception to the impugned order dated 21/01/2014 passed by the Special Judge under Prevention of Corruption Act, 1988 by which the application under Section 156(3)

filed by the respondent/complainant has been allowed and learned Special Judge has directed the Anti Corruption Bureau to investigate and submit that report in accordance with law.

2. Mr. Sourabh Sahu, learned counsel appearing for the petitioner, would submit that before granting the application under Section 156(3) of the CrPC, learned Special Judge has not satisfied himself about the statutory compliance of Section 151(1) as well as Section 154(3) of CrPC, as such, the impugned order passed by learned Special Judge is in teeth of the decision rendered by the Supreme Court in the matter of **Priyanka Srivastava v. State of Uttar Pradesh**¹, therefore, the impugned order deserves to be set aside.

3. Mr. Virendra Verma, learned counsel appearing for the respondent, would submit that in paragraph 8 of the application under Section 156(3) of CrPC necessary facts with regard to the statutory compliance of Section 154(1) and 154(3) of CrPC have already been mentioned, as such, it cannot be held that it has not been complied with, therefore, the instant petition deserves to be dismissed.

¹ (2015) 6 SCC 287

4. 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 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. "

5. 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 Pradesh² 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.

6. Reverting to the facts of the present case in light of the principle of law laid down by the Supreme Court in the above-stated judgment (supra), it is quite vivid that learned Special Judge, while entertaining the application under Section 156(3) of CrPC, has not satisfied with the requirement contained under Sections 154(1) and 154(3) of the CrPC except for the averment made in paragraph 8 that the complainant/respondent has sent the substance of information to the S.H.O. on 27/05/2013 and thereafter to the S.P., Janjgir-Champa on 31/05/2013. Nothing has been brought on record to satisfy the Court that he has actually sent

2 AIR 2019 SC 2109

the substance of information to the S.H.O. or to the Anti Corruption Bureau as the offences levelled against the petitioners are under Prevention of Corruption Act, 1988, and thereafter to the Superintendent of Police under Section 154(3) of CrPC, as such, there is no compliance of Section 154(1) and 154(3) of CrPC as no documents have been filed by the complainant/respondent in support of the averment made in paragraph 8 of the application under Section 156(3) of CrPC.

7.As a fallout and consequence of the aforesaid legal analysis, the impugned order passed by learned Special Judge, being in teeth of the decision rendered by the Supreme Court in **Priyanka Srivastava** (supra), is hereby set aside.

8.Accordingly, the instant petition is allowed to the extent indicated herein-above. No cost(s).

Sd/-
(Sanjay K. Agrawal)
Judge