

IN THE HIGH COURT AT CALCUTTA
CRIMINAL REVISIONAL JURISDICTION
APPELLATE SIDE

Present: The Hon'ble Justice Shivakant Prasad
CRR 1323 of 2019
Dr. Archana

-Versus-

The State of West Bengal & Ors.

For the Petitioner	:	Mr. Manjit Singh Mr. Pawan Kumar Gupta Ms. Sofia Nesar Mr. Biswajit Mal
For the State/OP 1	:	Mr. Ranabir Roy Chowdhury
For the Opposite Party No. 2	:	Mr. Pratik Kumar Bhattacharyya Mr. Aniruddha Bhattacharya
Heard on	:	20.01.2021
Judgment on	:	18.03.2021

Shivakant Prasad, J.

This is an application under Section 482 of the Code of Criminal Procedure, 1973 whereby and whereunder the petitioner, an officer of the Indian Administrative Service presently posted as the Secretary Department of Self Help Group and Self Employment, Government of West Bengal has sought to quash the first information report in connection with Alipore Police Station Case No.54 of 2019 dated 14.04.2019 under Sections 120B/ 167/ 182/ 193/ 417/ 465/ 466/ 468/ 469/ 471/ 501/ 509 and 34 of Indian Penal Code, 1860 read with Section 21 and 26 of the Indian Telegraph Act and the impugned order dated 28th March, 2019 of the learned Chief Judicial Magistrate, Alipore directing the Officer-in-charge, Alipore P.S. to register a

specific police case for investigation after treating the same application under Section 156(3) Cr.P.C. as an FIR against the petitioner arraigning her as an accused along with other accused persons.

It is submitted that the petitioner prior to present assignment held various responsible positions in the Government of West Bengal as the District Magistrate of the Districts of Purba Medinipur and Malda and thereafter the Secretary of Kolkata Municipal Development Authority.

At the outset it is pointed out that the allegation made in the First Information Report does not disclose any offence committed by the petitioner far less the offences alleged by quoting Sections of various Acts. It is evident that there has been a manifest, *malafide*, absurd allegation and improbable allegation levelled by the opposite party no. 2 against the petitioner.

It is admitted fact that the petitioner was married to opposite party no. 2 an IPS Officer presently posted as Assistant Inspector General (Special) Bhawani Bhawan, Kolkata-700027 who committed intolerable torture upon the petitioner compelling her to lodge the case being Serampore Police Station Case no. 44 of 2006 dated 22nd February, 2006 against him and others under Sections 498A/ 307/ 448/ 506/ 342 of the Indian Penal Code read with Sections 3 & 4 of the Dowry Prohibition Act.

It is contended that the opposite party no. 2 is leading a bigamous relation with another lady who committed torture upon the

petitioner and her only daughter aged 6 months compelling the petitioner to lodge another case being Ballygunge P.S. Case No. 86 of 2014 dated 09.01.2014 under Sections 498A/ 307/ 494/ 497/ 34 of the Indian Penal Code read with Section 23 of the Juvenile Justice (Care & Protection) Act and Sections 3 & 4 of the Dowry Prohibition Act and charge sheet under Sections 498A/ 323 and 34 of the Indian Penal Code read with Sections 3 & 4 of the Dowry Prohibition Act and charge sheet has been submitted on completion of investigation against the opposite party no. 2 and others in both the cases which cases are pending for trial.

It is specifically contended that in the course of investigation, the Investigating Officer had received certain documents from the petitioner as mentioned in the Annexure P2 of the application in connection with Ballygunge P.S. Case No. 86 of 2014 but for the reasons best known to the Investigating Officer, many of the vital documents seized under seizure list have not been made part of the charge sheet to omit graver penal sections and for that the petitioner challenged the same in a criminal revisional case being CRR No. 179 of 2016 before the Hon'ble High Court and on perusal of those documents, the Hon'ble Court by order dated 5th October, 2016 gave liberty to the petitioner to participate in the proceedings of Ballygunge P.S. Case No. 86 of 2016 and to lead additional evidence under Section 311 of the Code of Criminal Procedure which fact is revealed from the said order annexed vide letter P3. Accordingly, the petitioner

applied under Section 311 of the Code before the trial Court to bring on record the said documents as additional documents to which no objection was raised either by the Investigating Agency or by the opposite party no. 2. The said criminal cases are pending before the trial Court.

That apart, in the course of departmental inquiry proceeding against the opposite party no. 2, the petitioner submitted said vital documents on 29.06.2015 in his presence before the Enquiry Officer Shri Sanjay Chander, Additional Director General of Police and Presenting Officer Shri Anil Kumar, Inspector General of Police and said documents were accepted and were marked exhibits without objection from the opposite party no. 2. During recording the statement of the petitioner in the departmental proceeding against the opposite party no. 2, the petitioner categorically stated that the said documents being sms records, facebook snapshots and call records were actually saved by the opposite party no. 2. The said documents under the list of exhibits have been collectively annexed vide letter 14.

It is submitted that the opposite party no. 2 with pre-motivated design and to prevent the admitted evidence to be used against him in the enquiry or before the trial Court, filed an application under Section 156(3) Cr.P.C. implicating the petitioner with two others on absurd and inherently improbable allegations because the said documents were seized by the Investigating Officer from the lawful possession of the petitioner and were produced in the said

departmental proceeding before Enquiry Officer in Ballygunge P.S. Case No. 86 of 2014, pending for trial which are part of judicial record. It is pertinent to take note of the fact that the said documents in question were never challenged by the opposite party no. 2 which are now alleged to be forged or illegal or illegally procured documents by the petitioner. The said documents were handed over to the Investigating Officer attached with the Women grievances cell of the Detective Department Kolkata as well.

It is urged that the learned Magistrate ordered for investigation on treating the application under Section 156(3) Cr.P.C. as an FIR without taking recourse to the inquiry under Section 202 of the said Code.

It is also submitted on behalf of the petitioner that the documents were handed over to the petitioner by the opposite party no. 2 when both were staying together as husband and wife. The said documents were relied by the petitioner in the proceedings which are now in the public domain accessible to everybody and there was news publication of the bigamous relationship of the opposite party no. 2 which fact is also evident from the document marked with letter P5. It is pointed out the petitioner deposed before inquiring authority on 29th June, 2015 and after a gap of almost four years, the opposite party no. 2 has filed the instant criminal case with an intention to dilute her case in the trial in connection with Ballygunge P.S. Case No. 86 of 2014 and with an object in mind to delay the trial and

enquiry proceedings pending against him by falsely implicating the petitioner in a criminal case which is a counterblast to the criminal cases pending against the opposite party no. 2. It is also contended that mere mentioning of penal sections is not sufficient to construe offence allegedly committed by each accused persons as the allegations in the First Information Report are vague and omnibus inasmuch as the allegation do not reveal any ingredient of the offences and the instant proceedings is baseless, frivolous and displays a clear misuse of provisions of criminal law in failing to disclose any commission of offence allegedly committed by the petitioner.

In support of the petitioners' case reliance has been placed in case of ***Maksud Saiyed*** reported in ***2008 (5) SCC 668*** wherein the Hon'ble Apex Court held that where jurisdiction is exercised on a complaint petition filed in terms of Section 156(3) or Section 200 of Code of Criminal Procedure, the Magistrate is required to apply his mind. The Magistrate cannot refer an application under Section 156(3) against a public servant without valid sanction order and the application of mind by the Magistrate should be reflected in the order. The mere statement that he has gone through the complaint, documents and heard the complainant as such as reflected in the order will not be sufficient. After going through the complaint, documents and hearing the complainant, what weighed with the Magistrate to order investigation under Section 156(3) Cr.P.C., should

be reflected in the order, though a detail expression of his views is neither required or warranted.

Thus, it is settled law that power under Section 156(3) of Cr.P.C. warrants application of judicious mind of a judicial Magistrate before ordering investigation as 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 aggrieved citizen with clean hands must have free access to invoke the said power as it protects the citizens but when pervert litigation takes this route to harass their fellow citizens, efforts are to be made to scuttle and curb the same.

It is also submitted that the perusal of application under Section 156(3) of the Code in the instant case does not reveal the compliance of Section 154(3) of the Code pursuant to which the case under reference has been registered by Alipore Police Station as the order impugned does not reveal the application of judicial mind of Learned Magistrate justifying initiation of an FIR against a public servant by another public servant inasmuch as the facts are purely connected to their personal matrimonial dispute and the same seems to be the counter blast of the cases pending against the opposite party no. 2.

It is submitted that the FIR is barred by under Section 468 of the Code of Criminal Procedure, 1973 as the most of the documents

stated to have been allegedly forged were known to the opposite party no. 2 from 2013 which is axiomatic from documents itself, hence, reliance of those documents by petitioner are protected by provision of Section 122 of the Evidence Act. It is also contended that the Inquiring Authority has not yet declared the said documents as not admissible nor any objection filed on the part of the opposite party no. 2. The proceeding itself is barred by the law as it is in total violation of Section 195 (1) (a) (i) (b) (i) of the Code of Criminal Procedure, 1973.

It is thus argued that First Information Report is actuated with malice and the same was instituted to wreck vengeance on the petitioner, as a tool to duress the petitioner and/or coerce her into submitting to the demands of the opposite party no. 2. A bare reading of the materials on record, unequivocally and unerringly disclose that the entire case of the opposite party no. 2, is in its length and breadth, vague in nature, without an iota of criminality.

It is now required to look at the offences as alleged in the FIR for the offences under Section 120B IPC which provides for punishment of criminal offence; Section 167 IPC which provides for public servant and incorrect documents with intend to cause injury; Section 182 IPC relating to false information with intend to cause public servant to use his lawful power to the injury of another person; Section 193 IPC which enjoins punishment for false evidence; Section 173 IPC which provides punishment for cheating; Section 465 IPC provisioned for punishment for forgery; Section 466 deals with forgery

of record of Court or Registers etc; Section 468 IPC provides for forgery for purpose of cheating; Section 471 IPC relates to using as genuine any document or electric record; Section 501 IPC provides for printing or engraving matter known to be defamatory; Section 509 IPC relates to utterance of word, gesture or act intended to insult the modesty of a woman.

Under Telegraphs Act, 1885 offence alleged is in respect of Section 21 which provides that any person, knowing or having reason to believe that a telegraph has been established or is maintained or worked in contravention of this Act, transmits or receives any message by such telegraph, or performs any service incidental thereto, or delivers any message for transmission by such telegraph or accepts delivery of any message sent thereby and Section 26 of the said Act relates to making away with or altering, or unlawfully intercepting or disclosing, messages, or divulging purport of signals by Telegraph officer or other official.

Under Information Technology Act, 2000 offence alleged under Section 43 provides for penalty for damage to computer, computer system, etc.; Section 66 hacking with Computer System; Section 66 B. punishment for Dishonestly Receiving Stolen Computer Resource or Communication Device; Section 66E punishment for violation of privacy; Section 67 publishing of information which is obscene in electronic form; Section 67A punishment for publishing or

transmitting of material containing sexually explicit act, etc., in electronic form and Section 72 relates to breach of confidentiality and privacy.

Therefore, having regard to the aforesaid provision of various Sections of IPC; Telegraph Act and Information Technology Act noted above, this Court is of the view that no ingredient of any offence far less the offences alleged in the FIR is warranted against the petitioner.

It is axiomatic from the FIR, the documents and the discussion in the above paragraphs that the opposite party no. 2 being the husband of the petitioner was well in the knowledge of the documents which were placed before the inquiry authority in the departmental proceeding against the opposite party no. 2 which were accepted and marked in presence of the opposite party no. 2 without any ire. As such, it can safely be said that the FIR which has been registered on an application under Section 156(3) of Cr.P.C. for investigation is at a belated stage and such proceeding would be barred by delay and laches of the opposite party no. 2 in approaching the Court without any explanation for delay in the alleged FIR which undoubtedly is a bar under Section 468 Cr.P.C. and is the outcome of counterblast against the two cases pending for trial against the opposite party no.2.

In this regard, it is settled principle of law that in cases where there is a delay in lodging a complaint, the Court has to look for a plausible explanation for such delay. In absence of such an

explanation, the delay may be fatal and the Court should carefully examine the facts before it for the reason that a frustrated litigant may initiate a criminal proceeding just to harass the other side with *mala fide* intentions or the ulterior motive or wrecking vengeance on the other party. Chagrined and frustrated litigants should not be permitted to give vent to their frustrations by cheaply invoking the jurisdiction of the criminal Court. The Court proceedings ought not to be permitted to degenerate into a weapon of harassment and persecution. In such a case, where a complaint is lodged is clearly with a view to spite the other party in long and arduous criminal proceedings, the Court may take a view that it amounts to an abuse of the process of law in the facts and circumstances of the case. The Supreme Court has laid down certain criteria under which the Hon'ble High Courts are to exercise inherent powers in order to quash a proceedings pending before any court of law. It has been held that where the averments made in the petition of complaint do not make the offences as alleged or any offence at all, it would only be just and proper in the interest of justice to quash proceedings as the same amounts to abuse of the process of Court. In the instant case the facts disclosed in first information report do not make out any contravention of the provisions of the Indian Penal Code, Telegraph Act and Information Technology Act as such no offence allegedly is made out.

It would not be out of the context to take note of the fact that opposite party no. 2 has suppressed the fact that the trial in respect of Ballygunge P.S. Case No. 86 of 2014 has already been started and vital documents in question have been submitted before the trial Court by virtue of an application under Section 311 of Cr.P.C. pursuant to solemn order of the Hon'ble Court passed in CRR No. 179 of 2016.

Under Section 482 of the Code of Criminal Procedure, 1973, inherent power of the Hon'ble High Court can be invoked for quashing of a proceeding when it comes to the conclusion that allowing a proceeding to continue would be an abuse of the process of Court or that the ends of justice required that the proceeding ought to be quashed.

In this context, it would be apt to take note of the observation made in case of ***Dinesh Dutt Joshi vs State of Rajasthan And Anr*** reported in ***(2001) 8 SCC 570*** at para 6 which reads thus:

“Para 6. [Section 482](#) of the Code of Criminal Procedure confers upon the High Court inherent powers to make such orders as may be necessary to give effect to any order under [the Code](#), or to prevent abuse of the process of the any Court or otherwise to secure the ends of justice. It is well established principle of law that every Court has inherent power to act ex debitojustitiae - to do that real and substantial justice for the administration of which alone it exists or to prevent abuse of the process of the Court. The principle embodied in Section is based upon the maxim: Quando lex aliquid alicui concedit, concedere videtur id quo res ipsa esse non potest i.e. when the law gives anything to anyone, it gives also all those things, without which the thing itself would be unavailable. Section does not confer any new power, but only

declares that the High Court possesses inherent powers for the purposes specified in the Section. As Lacunae are sometimes found in procedural law, the Section has been embodied to cover such Lacunae wherever they are discovered. The use of extraordinary powers conferred upon the High Court under this Section are however required to be reserved, as far as possible, for extraordinary cases.”

Mr. Manjit Singh learned counsel for the petitioner adverted to an order passed in CRR 179 of 2016 to contend that the petitioner preferred the revision challenging the order dated 02.01.2016 of the Chief Judicial Magistrate, Alipore, South 24 Parganas in connection with Ballygunge P.S. Case No. 86 dated 25.07.2016 under Sections 498A/307/494/497/34 of the Indian Penal Code and under Sections 3 and 4 of Dowry Prohibition Act and Section 23 of Juvenile Justice (Care and Protection of Children Act, 2000) for having taken cognizance of offences punishable under Section 498A/323/34 of Indian Penal Code only against the opposite party no. 2 husband but other-in-laws were discharged as not sent up in the charge sheet. The petitioner being aggrieved of the discharge of other-in-laws had preferred the said revisional application before the Hon'ble Court and the Coordinate Bench of the Hon'ble Court found both the cases being Serampore P.S. Case and Ballygunge P.S. case intrinsically interlinked to one another and required to be heard by the same Court as both the parties are public servants posted in Calcutta, for the convenience of the parties, both the proceedings were transferred to the Court of the learned Chief Metropolitan Magistrate, Calcutta to proceed with the matters from the stage it had already arrived at and with the

liberty to the petitioner to participate in the proceeding and to lead additional evidence under the provision of Section 311 of the Criminal Procedure Code.

My attention is also invited to annexure P4 being the statement of the petitioner made before the Enquiry Officer in connection with departmental proceeding against the opposite party no. 2 narrating about the torture meted out to her and her child and various news papers clippings and the documents were also produced and marked exhibited in the proceeding. It is also revealed from her statement made to the enquiry Officer on 29.06.2015 that the opposite party no. 2 has confessed having bigamous relations with another lady since 2011 whom he was keeping as second spouse and that the lady on several occasions had stayed with him in govt allotted accommodation at flat no 21 of 1/247 Minto Park Govt. Rental Housing Estate, Kolkata since November, 2011, of and on, while the petitioner was posted as District Magistrate Malda and District Magistrate Purba Medinipur and all those documents viz, the facebook posts and clippings, newspapers clippings, audio recordings and transcripts thereof mobile conversations between the opposite party no. 2 and the said lady and these facts are well in the knowledge of the opposite party no. 2 right since year 2013.

The learned Chief Judicial Magistrate, passed his impugned order on 28.03.2019 on receipt of the application under Section 156(3) of Cr.P.C. for initiation of the investigation against the petitioner

without application of judicial mind and without adhering to the guidelines laid down by the Hon'ble Supreme Court in ***Priyanka Srivastava*** case reported in **(2015)6 SCC 287**. It appears that the opposite party no. 2 allegedly lodged an FIR with the Officer-in-charge, Alipore Police Station on 13th March, 2019 for registering an FIR against the accused person, namely, the petitioner alleging commission of cognizable offence and a copy of same was also allegedly submitted to Deputy Commissioner of Police, South Division and as they had not started any case, the opposite party no. 2 being aggrieved was compelled to prefer the petition under Section 156(3) of the Code of Criminal Procedure. The petition so filed before the CJM, Alipore is dated 28th March, 2019. It is alleged that an FIR lodged with the Officer-in-charge has been annexed to the application but this Court finds that no such copy of the FIR allegedly lodged with the Officer-in-charge has been annexed to the application under Section 156(3) to show the compliance under Section 154(1) of Cr.P.C. The communication of the FIR on the same day to the Deputy Commissioner of Police, South Division being superior officer to the Officer-in-charge Alipore Police Station cannot be accepted as per the compliance of the Section 156(3) of Cr.P.C. because on the same day it is alleged that the copy of FIR was sent to the Deputy Commissioner of Police.

A report from the Officer-in-charge Alipore Police Station was called for to ascertain whether at all, any FIR was lodged on 13th

March, 2019 because Mr. Ranabir Roy Chowdhury learned advocate for the State/opposite party no. 1 though presented the case diary but the same did not contain any copy of the FIR allegedly filed before the Officer-in-charge. The General Diary Book was produced before this Court by the Police Station with a Local Petition Register of Alipore Police Station for 2019 but as on 13th March, 2019 there is no recording of G.D entry in respect of the FIR being received by the Police Station. On the contrary on 14.04.2019, it appears that the Court complaint was received by the Police Station which was forwarded under the provision of Section 156(3) of Cr.P.C. It would appear from the Local Petition Register that on 14.03.2019 an application containing disclosure commission of cognizable offence for registration of FIR under Section 120B/ 167/ 182/ 193/ 417/ 465/ 466/ 468/ 469/ 471/ 501/ 509 and 34 of Indian Penal Code, 1860 read with Section 21 and 26 of the Indian Telegraph Act, 1885 and under Sections 43/66/63(b)/66(e)/67/67(A)/72 of the Information Technology Act, 2000 against the present petitioners, namely, Dr. Archana, Lokesh Kumar, Anil Kumar and others were received by the Police Station which was sent by Rishikesh Meena, IPS, Bhavani Bhawan. It is surprising to take note of the fact such an application which was allegedly received on 14.03.2019 is not the FIR dated 13.03.2019.

In this regard Mr. Singh learned counsel appearing for the petitioner assisted by Pawan Kumar Gupta Advocate invited my notice

to the provision of Regulation 55 of Chapter 5 of Police Regulation Calcutta which reads thus:-

“55. Recording of first information of a cognizable crime. (Section 3, Bengal Act II of 1866) (Section 9, Bengal Act IV of 1866).- (a) When a cognizable crime is first reported at a police station within the town of Calcutta or the suburbs of Calcutta, the information shall, under section 154 of the Code of Criminal Procedure, 1898, be drawn up by the Officer-in-charge of the police station in B.P. Form No. 27 in accordance with the instructions printed with it. The Officer-in-charge shall enter the charge in the Crime Register (West Bengal Form No. 4349) under the appropriate section of the law and also record a gist of the information in the General Diary (West Bengal Form No. 4350) giving the cross-reference of the entry number in the Crime Register and shall sign the entries.

(b) The information of a cognizable crime that shall first reach the police, whether oral or written shall be treated as the first information. It may be given by a person acquainted with the facts directly or on hearsay, but in either case it shall constitute the first information required by law upon which the enquiry shall be taken up. When hearsay information of a crime is given the station officer shall not wait to record, as the first information, the statement of the actual complainant or an eye-witness.

(c) A vague rumour shall be distinguished from a hearsay report. It shall not be reduced to writing or signed by the informant, but entered in the general diary. If, on subsequent information a vague rumour proves to have been well-founded, such subsequent information shall constitute the first information.

(d) **Report by Telephone.** - If a cognizable crime is reported by telephone an entry of the message shall be made in the general diary and an officer shall be immediately deputed to verify the genuineness of the message. If the message is found to be genuine but the informant remains anonymous or cannot be found the officer receiving the message shall himself lodge the information on the basis of the message.

(e) Police officers shall not defer drawing up the information report until they have tested the truth of the complaint. They shall not await the result of medical examination before recording a first information when a complaint is made of grievous hurt or other cognizable crime.

(f) **Report to Asstt. Sub-Inspector in charge of police station.** - An Assistant Sub-Inspector left in charge of a station may accept a written report of a cognizable offence. He shall get the report signed by the person giving it, enter an abstract of it in the general diary

and report the fact to the Officer-in-charge of the station, or any other officer who may first be available to take up the investigation.

If the report of a cognizable offence is given to such Assistant Sub-Inspector orally, he shall similarly enter an abstract of it in the general diary, and shall ask the informant to await the arrival of the Officer-in-charge or any other officer empowered to take up investigation.

If the report relates to the occurrence of a heinous crime, he shall send immediate information to the Sub-divisional Assistant Commissioner, and if the facts of the case, as may occur in dacoity, murder, etc., require the immediate apprehension of the accused he shall take all possible steps to effect arrest.

(g) First Information Reports, once recorded, shall on no account be cancelled by police station officers.”

Thus, it is clear from the said regulation that when a cognizable crime is first reported at Police Station within the town of Calcutta or the suburb of Calcutta the information must be under Section 154 of the Code of Criminal Procedure and it has to be drawn up by the officer-in-charge of the Police Station in W.B Form No. 27 in accordance with the instructions printed with it and the officer-in-charge shall enter the charge in the Crime Register in West Bengal Form No. 4349 under the appropriate section of the law and also record a gist of the information in the General Diary, West Bengal Form No. 4350 giving the cross reference of the entry number in the Crime Register and signed in the entries. Such information of a cognizable crime when first reach the Police Station whether it is oral or by writing has to be treated as the First Information. Therefore, it seems to be that the officer-in-charge of the Police Station is not functioning as per the rules and regulations of Police Regulation of Calcutta, instead a Local Petition Register has been

maintained as the petition dated 14.03.2019 was recorded in the Local Petition Register and in the General Diary Book but no such entry is made in the L.P. Register or General Diary Book or in the Crime Register in respect of the complaint dated 13th March, 2019 which was allegedly addressed to the officer-in-charge, Alipore Police Station in the relevant Form of the West Bengal required to be maintained by each Police Station.

Therefore, the application under Section 156(3) of Cr.P.C. which is required to be supported by an affidavit, the statement made by the opposite party no. 2 about the lodgement of an FIR on 13th March, 2019 appears to be a myth. It is also not understood as to why an officer-in-charge will not act on the basis of a complaint or information received from a person of a status being a member of the Indian Police Service who holds a superior position than the officer-in-charge of the Police Station and how an officer-in-charge would dare not register the cognizable offence if reported to by such an officer belonging to Indian Police Service. Thus, it is well understood that there is no General Diary entry in respect of the information received by the Police Station allegedly on 13.03.2019. There is no note in the general case diary. It also appears that a letter has been communicated to the Deputy Commissioner of Police and Commissioner of Police on 14.03.2019 but that fact is also not averred in the petition under Section 156(3) Cr.P.C. Before this Court, a supplementary affidavit on behalf of the opposite party no.

2 was filed with averment in paragraph 11 of affidavit in opposition to show the compliance of Section 154(3) of Cr.P.C. It would appear from the documents annexed vide annexure P1 that the opposite party no. 2 communicated to Commissioner of Police Station, Lalbazar on 14.03.2019 stating that he had lodged a complaint on 13.03.2019 with the Alipore Police Station for treating his FIR with the request to instruct the Inspector-in-charge, Alipore Police Station to do the needful and had enclosed a copy of the complaint but the copy of the complaint is not annexed to this supplementary affidavit for the best reason known to the opposite party no. 2 himself. It would appear from the annexure that the letter communicated to the Deputy Commissioner of Police, South Division by the opposite party no. 2 which has been shown to be received on 14.03.2019 at 13.30 hours in respect of complaint informing that he had lodged the complaint dated 13.03.2019 with Alipore Police Station for treating the same as FIR and thereby requested Deputy Commissioner of Police to instruct the Inspector-in-charge of Alipore Police Station to do the needful with the copy of the complaint annexed but the Local Petition Register (L.P.-Register) was produced by the officer-in-charge, Alipore Police Station to reveal that a petition was received by the Alipore Police Station disclosing commission of cognizable offence. Such a register is maintained in West Bengal Form No. 4329 which is the process register of section relating to nature of document, summons,

petition, notice, warrant etc. which is not as per the regulation no. 55. I do not find justification for having maintained such a complaint in the L. P. Register. It is also not understood whether a complaint was at all received on 14.03.2019 by the officer-in-charge as no copy of such complaint has been forwarded to this Court or even maintained in the case diary produced before the Court by Mr. Ranbir Roy Chowdhury learned Advocate for State/ opposite party no. 1.

Per contra, it is submitted on behalf of the opposite party no. 2 that the revisional application praying for quashing of FIR is *ipso facto* bad in law and premature and tantamount to an abuse of this Hon'ble Court's extraordinary powers under Section 482 of the Code of Criminal Procedure, 1973 as it seeks quashing of criminal proceedings at the very nascent stage without any justification/explanation/legal basis whatsoever.

It is submitted that an FIR cannot be throttled & quashed as soon as it has seen the light and life of an investigation, i.e. in its infant stage. The endeavor to throttle the investigation is demonstrable from the very application which makes out no ground of quashing of proceeding but instead levels generic allegations which are not specific to the case of the petitioner herein and that it is completely contrary to record and finding in order dated 28th March, 2019 of learned CJM.

It is further submitted that the Learned Court below has judiciously arrived at a conclusion that cognizable offences “may” have been committed and the same require investigation on the basis of the De-Facto Complainant’s complaint and that the learned Magistrate has ample power to monitor the investigation after issuance of the direction of registration of an FIR based on the petition under Section 156(3) of Cr.P.C.

It is submitted that the Learned Magistrate cannot form any opinion upon perusal of the written complaint & also cannot set down such opinion judicially in an order sheet, as doing so would amount to causing investigation personally after simultaneously directing for registration of an FIR, which will surely influence the investigation process but I have discussed above taking cue from a decision in Maksud Saiyed (supra) that the Magistrate is required to apply his mind upon preliminary inquiry before forwarding an application under Section 156(3) of Cr.P.C. for investigation.

Next, it is contended that the ground taken for quashing of the FIR on the contention that there is no compliance of Section 154(3) is a mala-fide on the part of the petitioner not based on the correct facts pointing out that the provisions of Section 154(3) has been complied which is apparent from paragraph 2 of the application under Section 156(3) filed by the opposite party no. 2 herein. Thus, it is submitted that (i) The original complaint dated March 13, 2019 was received by the Officer-in-Charge, Alipore PS on March 13, 2019 at 17.40 hrs. (ii)

As the Alipore PS failed to lodge an FIR the De-Facto Complainant ventilated his grievance before the Deputy Commissioner of Police (South Division) on March 14, 2019 at 13.30 hrs by way of a formal complaint. (iii) As the Alipore PS failed to lodge an FIR the De-Facto Complainant also ventilated his grievance before the Joint Commissioner of Police, Kolkata on March 14, 2019 by way of a formal complaint. As such, there has been compliance of Section 154(3) Cr.P.C. It is also submitted that the petition under Section 156(3) has been supported by an affidavit of the De-Facto Complainant and is a statement of oath before the Learned Criminal Court which grants it cognizable legal sanctity and merely because the same was not attached to the 156(3) application, does not change the fact that 154(3) of the Code had not been complied with by the De-Facto Complainant.

It thus appear to me that opposite party no. 2/defacto complainant admittedly had not attached to the application under Section 156(3), the copies of the complaint dated 13th March, 2019 sent to the officer-in-charge and also the information given to the Deputy Commissioner of Police and Commissioner of Police. So, it can be safely to say that compliance of Section 154(1) and 154(3) of the Cr.P.C. was simply averred in the application under Section 156(3) of the Cr.P.C. but the facts were not ascertained on preliminary inquiry from the concerned police station and so also the superior officer of the inspector-in-charge of the said police station about the inaction on

the part of the inspector-in-charge, Alipore. It is curious to take note of the fact that the defacto complainant being a person in Indian Police Service superior to the inspector-in-charge of police station would be left without any action on the part of the police station.

I am unable to conceive of the submission of the learned counsel for the opposite party no. 2 that the application under Section 156(3) in fact with meticulous detail spells out how the offences have been committed by the petitioner/accused and the role played in committing them in view of my observation with regard to the alleged offence mentioned in the application under Indian Penal Code, Telegraph Act and Information Technology Act, however, I fully agree on the proposition of the law laid by the Hon'ble Apex Court that the power of the High Court under Section 482 of Cr.P.C. is an exception to the general rule in considering whether FIR should be quashed or not.

In support of the contention so made on behalf of the opposite party in case of **Dinesh Dutt Joshi** (supra), the case related to offence under Section 13(1) (d) of Prevention of Corruption Act read with Section 13(2) Prevention of Corruption Act and 120B IPC for illegal gratification in providing electric connection and in that set of fact, aforesaid observation has been made in para 6 of the cited judgment.

Mr. Bhattacharyya, learned counsel for the opposite party no. 2 placed reliance on a decision in **Rupam Deol Bajaj v. Kanwar Pal**

Singh Gill, 1995 SCC (Cri.) 1059 wherein reference to decision in case of **State of Haryana Vs. Bhajan Lal & Ors. (AIR 1992 SC 604: 1992 Supp(1) SCC 335)** has been relied to contend as to the circumstances and categories of cases in which High Court can quash an FIR or a complaint in exercise of provisions under Article 226 of the Constitution or under Section 482 Cr.P.C., wherein it has been observed and held thus:

“In the backdrop of the interpretation of the various relevant provisions [of the Code](#) under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under [Article 226](#) or the inherent powers under [Section 482](#) of the Code which we have extracted and of cases by way of illustration wherein such power process of any court or otherwise to secure the lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.

(1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under [Section 156\(1\)](#) of the Code except under an order of a Magistrate within the purview of [Section 155 \(2\) of the Code](#).

(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

(4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under [Section 155 \(2\) of the Code](#).

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.

We also give a note of caution to the effect that the power of quashing a criminal proceeding should be exercised very sparingly and with circumspection and that too i the rarest of rare cases;

that the court will not be justified in embarking upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the FIR or the complaint and that the extraordinary or inherent powers do not confer an arbitrary jurisdiction on the court to act according to its whim or caprice."

Therefore, the above noted 7 categories of cases have been jotted down in Bhajan Lal case in which the High Court can exercise its inherent power under Section 482 of the Code relating to cognizable offences to quash an FIR to prevent abuse of process of any Court or otherwise to secure the ends of justice, however, with a note of caution in the matter of quashing criminal proceeding very sparingly and with circumspection and in rarest of the rare cases.

The said guidelines in Bhajan Lal case (supra) has also been relied in ***State of Telengana vs Habib Abdullah – (2017) 2 SCC 779*** wherein it has been observed in Para 11 to the effect that once an FIR is registered, the accused persons can always approach the High Court under Section 482 Cr.P.C. or under Article 226 of the Constitution for quashing of the FIR.

Lastly, it is submitted that detail and elaborate reasons need not be set out in an order under Section 156(3) by the learned Magistrate as long as the learned Magistrate records his satisfaction for grant of such order and thus has relied on the decision in case of (i) State of Haryana & Ors. -Vs- Ch. Bhajanlal & Anr (AIR 1992 SC 604); (ii) Sujan Multiports Limited. -Vs- State of Haryana and Ors (2019 (3) RCR (Criminal) 372); (iii) G.P. Sinha Vs. State of Gujarat (2003 CriLJ 4538); and (iv) Kanaksinh Hathisinh Jadeja and Ors. Vs. Blabhadrasinh Narendraisinh Jhala and Ors (1988 CriLJ 578).

In view of the discussion above and having regard to the case in hand being rarest of the rare case in the sense that the opposite party no. 2 husband of the petitioner has initiated the FIR under reference on the basis of an application under Section 156(3) Cr.P.C. at a much belated stage without explaining plausible reason for the delay and such action has been initiated only with an object in mind to stifle the trial of two criminal cases, one of Srerampore P.S. and another of Ballygunge P.S. brought by the petitioner against the opposite party no. 2 which cases have been directed by the Hon'ble Court under the scheme of Article 227 of Constitution of India for their trial by Chief Metropolitan Magistrate Kolkata and the opposite party no. 2 appears to have initiated the FIR sought to be quashed by the petitioner, to create an impediment in the departmental proceeding pending against him in which the documents allegedly forged by the petitioner were produced and marked exhibits for their

consideration and no judicial or quasi judicial opinion has yet been given in the said trial and departmental proceedings, ergo, the instant case of the petitioner does fall within the category of rarest of rare cases when the fight is between the petitioner and opposite party no. 2 being the spouse. It would not be out of the context to say that spouse necessarily refers to a relationship based on marriage and could not be extended to cover other types of partner, however, stable the relationship. Therefore, the petitioner is well protected under the provision of Section 122 of Evidence Act which relates to communications during marriage. The provision protect the disclosure of any communication made during marriage between the spouses which provides privilege to a spouse and to prevent disclosure of communication made during marriage between the spouses. Therefore, the documents produced in the departmental proceeding by the petitioner and also before the trial Court by application of Section 311 of Cr.P.C. pursuant to liberty given by a Coordinate Bench of this Hon'ble Court cannot be viewed as the forged documents allegedly procured by the petitioner. Ergo, on the bare reading of the petition under Section 156(3) of the Code, no offence mentioned therein is attracted as discussed in the forgoing paragraphs. Thus, it appears to me that the opposite party no. 2 initiated the proceeding maliciously with an ulterior motive to wreck vengeance on the petitioner with a view to spite due to private and personal grudge as there is souring relationship between them.

I, therefore, conclude by holding that the application under Section 156(3) of Cr.P.C. dated 28.03.2019 forwarded to the Police Station for treating the same as an FIR was not in due compliance of Section 154(1) and 154(3) of the Code of Criminal Procedure as there is no annexure of a copy of the FIR dated 13.03.2019. There is no copy of such application in the case dairy. There is no copy of such an FIR being annexed to the affidavit in opposition. There is no copy of such an FIR being annexed in the supplementary affidavit too. Supplementary affidavit in opposition simply annexed the letters communicated to the Deputy Commissioner of Police and the Commissioner of Police as on 14.03.2019 but there is no enclosure of copy of the FIR dated 13.03.2019 having been sent to the officer-in-charge for starting a specific Police case for investigation.

Conclusively, I find that there is no averment in the petition under Section 156(3) about any such copy even sent to the Deputy Commissioner of Police and to the Commissioner of Police. The formal FIR reveals that information being received on 30.03.2019 whereas it ought to have been on 13.03.2019 instead. I find from the order of the learned CJM forwarding the petition under Section 156(3) of Cr.P.C that the order was not pursuant to the preliminary inquiry undertaken by CJM as per the provision of Section 202 of the Code although, the learned Magistrate is not called upon to give reasoning for an order for investigation but there must be objective application of judicial mind on preliminary inquiry to ascertain the mandatory

compliance of Section 154(1) and 154(3) of Cr.P.C. and the directives of the Hon'ble Supreme Court embodied in ***Priyanka Srivastava Vs. State of U.P.& Ors. (2015) 6 SCC 287.***

Therefore, the offences as alleged are not tenable, *prima facie*, on conjoint reading of the averments made in the application under Section 156(3) with that of the provisions of the Indian Penal Code, Indian Telegraph Act and so also the Information Technology Act. This Court is aware that it is not expedient on the part of the High Court to enter into the merit of the allegations but in the context of what has been discussed above in the forgoing paragraphs, if the investigation is allowed to proceed, it would mean allowing a mock trial.

Before I part with, Police Chief of Kolkata Police would ensure compliance of Regulation 55 of Calcutta Police Regulation by all the officer-in-charge of Kolkata Police to see that as soon as first information of a cognizable crime/complaint disclosing cognizable offence is received at the Police Station, such information/complaint must be entered in the General Diary Book in W.B. Form No. 27 without loss of time and in no case such complaint be noted in the Local Petition Register in West Bengal Form no. 4329 being the Process Register of section.

Let, a copy of this judgment be sent to the Commissioner of Police, Kolkata for suitable direction upon the officer-in-charge of all Police Stations and the Deputy Commissioner of Police of the

concerned division to monitor the action taken by the officer-in-charge concerned Police Station by little and often inspection of such General Diary Book.

In the context of what has been discussed above, the proceeding being Alipore P.S. Case No.54 of 2019 dated 14.04.2019 under Sections 120B/ 167/ 182/ 193/ 417/ 465/ 466/ 468/ 469/ 471/ 501/ 509 and 34 of Indian Penal Code, 1860 read with Section 21 and 26 of the Indian Telegraph Act is hereby quashed qua the petitioner.

Accordingly, application being CRR 1323 of 2019 is allowed and decided.

Urgent certified photocopy of this Judgment, if applied for, be supplied to the parties upon compliance with all requisite formalities.

(Shivakant Prasad, J.)

Later

Mr. Bhattacharyya learned counsel for the opposite party no. 2 submits for a stay of the operation of the order passed herein above. Such prayer is declined, however, the opposite party no. 2 is at liberty to move the higher forum, if so advised.

(Shivakant Prasad, J.)