

HIGH COURT OF CHHATTISGARH AT BILASPUR**WPCR No. 50 of 2016**

Naresh Swamy S/o Shri Venkat Swami, Aged about 53 years, Executive Engineer, Public Works Department, Manendragarh Division, Tahsil Manendragarh, Distt. Koriya, Chhattisgarh.

---Petitioner

Versus

1. State of Chhattisgarh, through the Secretary, Department of Home (Police), Mantralaya, Mahanadi Bhawan, Naya Raipur, Distt. Raipur, Chhattisgarh.
2. Station-in-charge, Police Station & Tahsil Manendragarh, Distt. Koriya, Chhattisgarh.
3. Raees Ahmed, S/o Mashud Ahmed, Aged about 46 years, R/o Ward No. 10, Kotma Road, Bijuri, Presently R/o Ward No. 17, Masjid Para, Manendragarh, Ilias Building, Manendragarh, Distt. Koriya, Chhattisgarh.
4. Shri R.P.Pandey, Retired Sub-Divisional Officer, Public Works Department, R/o Manendragarh, Thana and Tahsil Manendragarh, Distt. Koriya, Chhattisgarh.
5. Shri S.K. Sahu, Sub-Engineer, Public Works Department, Baikunthpur, Tahsil Manendragarh, Distt. Koriya, Chhattisgarh.
6. Shri J.N. Ram, Sub-Divisional Officer, Public Works Department, R/o Manendragarh, Thana and Tahsil Manendragarh, Distt. Koriya, Chhattisgarh.

7. Shri Babulal Agrawal, Proprietor, Surguja Bricks Industries, Gurudwara Road, Bishrampur, Distt. Surajpur, Chhattisgarh.

8. Shri Amit Goyal, S/o Shri Babulal Agrawal, Gurudwara Road, Bishrampur (wrongly typed as Bilaspur), Distt. Surajpur, Chhattisgarh.

--- Respondents

WPCR No. 51 of 2016

1. Babulal Agrawal, S/o Shri Rameshar Das Agrawal, Aged about 60 years, Proprietor Surguja Bricks Industries, Gurudwara Road, Bishrampur, Civil and Revenue Distt. Surajpur, Chhattisgarh.

2. Amit Goyal S/o Babulal Agrawal, Aged about 32 years, R/o Gurudwara Road, Bishrampur-Surajpur, P.S. Bishrampur, Civil and Revenue Distt. Surajpur, Chhattisgarh.

---Petitioners

Versus

1. Rayees Ahmad S/o Masud Ahmad, Aged about 46 years, R/o Ward No. 10 Kotma Road, Bijuri, At present R/o Ward No. 17, Masjid Para, Manendragarh, Iliyas Building, Manendragarh, P.S. and Post Manendragarh, Civil and Revenue Distt. Korea, Chhattisgarh.

2. N. Swami, Executive Engineer, Public Works Department (B/R), Manendragarh, Tahsil Manendragarh, P.S. and Post Manendragarh, Civil and Revenue Distt. Korea, Chhattisgarh.

3. Shri R.P. Pandey, Retired Sub-Divisional Officer, Public Works Department (B/R), Manendragarh,

Tahsil Manendragarh, P.S. and Post Manendragarh,
Civil and Revenue Distt. Korea, Chhattisgarh.

4. Shri S.K. Sahu, Sub Engineer, Public Works
Department (B/R), Baikunthpur, Tahsil
Manendragarh, P.S. and Post Manendragarh, Civil
and Revenue Distt. Korea, Chhattisgarh.
5. Shri G.N.Ram, Sub-divisional Officer, Public
Works Department (B/R), Manendragarh, Tahsil
Manendragarh, P.S. and Post Manendragarh, Civil
and Revenue Distt. Korea, Chhattisgarh.
6. In-charge of Police Station Manendragarh, Tahsil
Manendragarh, P.S. and Post Manendragarh, Civil
and Revenue Distt. Korea, Chhattisgarh.

--- Respondents

WPCR No. 74 of 2016

G.N. Ram S/o Shri Jugeshwar Ram, Aged about 43
years, Presently Posted as Sub-divisional
Officer, Public Works Department, Sub-Division
No. 1, Manendragarh, Tahsil Manendragarh, Distt.
Koriya, Chhattisgarh.

---Petitioner

Versus

1. State of Chhattisgarh, Through the Secretary,
Department of Home (Police), Mantralaya,
Mahanadi Bhawan, Naya Raipur, Distt. Raipur,
Chhattisgarh.
2. Station-in-charge, Police Station & Tahsil
Manendragarh, Distt. Koriya, Chhattisgarh.
3. Raees Ahmed, S/o Mashud Ahmed, Aged about 46
years, R/o Ward No. 10, Kotma Road, Bijuri,
Presently R/o Ward No. 17, Masjid Para,

Manendragarh, Ilias Building, Manendragarh,
Distt. Koriya, Chhattisgarh.

4. Naresh Swamy S/o Shri Venkat Swami, Aged about 53 years, Executive Engineer, Public Works Department, Manendragarh Division, Tahsil Manendragarh, Distt. Koriya, Chhattisgarh.
5. Shri R.P. Pandey, Retired Sub-Divisional Officer, Public Works Department, R/o Manendragarh, Thana and Tahsil Manendragarh, Distt. Koriya, Chhattisgarh.
6. Shri S.K. Sahu, Sub-Engineer, Public Works Department, Baikunthpur, Tahsil Manendragarh, Distt. Koriya, Chhattisgarh.
7. Shri Babulal Agrawal, Proprietor, Surguja Bricks Industries, Gurudwara Road, Bishrampur, Distt. Surajpur, Chhattisgarh.
8. Shri Amit Goyal S/o Shri Babulal Agrawal, Gurudwara Road, Bishrampur (wrongly typed as Bilaspur), Distt. Surajpur, Chhattisgarh.

--- Respondents

For Petitioners :-

In WPCR No. 50/2016 &

In WPCR No. 74/2016 :- Mr. Abhyuday Singh, Advocate

In WPCR No. 51/2016 :- Mr. Manoj Paranjpe, Advocate

For Respondent No. 3 in WPCR Nos. 50/2016 & 74/2016 and
respondent No. 1 in WPCR No. 51/2016 :-

Ms. Sharmila Singh and

Mr. Kawaljeet Singh Saini, Advocates

For State :- Mr. Jitendra Pali, Dy. A.G.

Hon'ble Shri Justice Sanjay K. Agrawal

Order on Board

11/02/2021

1. Since, short point is involved in all these writ petitioner, therefore, with the consent of the parties, these matters are heard finally and are being disposed of by this common order.
2. The petitioner in WPCR No. 50/2016 is an Executive Engineer in P.W.D.; petitioners in WPCR No. 51/2016 are contractors and proprietors of M/s Surguja Bricks Industries; and petitioner in WPCR No. 74/2016 is posted as Sub-Divisional Officer in P.W.D. at the relevant point of time. These three writ petitions have been filed seeking quashment of impugned order dated 15/02/2016 by which learned Judicial Magistrate First Class, Manendragarh has directed for registration of offences punishable under Sections 409, 420, 467, 468 and 471 of IPC against the present petitioners and granting an application under Section 156(3) of CrPC filed by the complainant Raees Ahmed.
3. Mr. Manoj Paranjpe and Mr. Abhyuday Singh, learned counsel appearing for the petitioners, would submit that in the complaint filed by

respondent No. 3 in WPCR Nos. 50/2016 & 74/2016 and respondent No. 1 in WPCR No. 51/2016 namely Raees Ahmed under Section 156(3) of CrPC, the provisions contained under Section 151(1) and 154(3) of CrPC have not been completely complied with as neither the application was filed before the SHO of the concerned Police Station nor was it sent by post to the concerned Superintendent of Police, therefore, the impugned order passed by learned Judicial Magistrate is in teeth of the decision rendered by the Supreme Court in the matter of **Priyanka Srivastava v. State of Uttar Pradesh**¹ which has been followed with approval by the Supreme Court in the matter of **Vikram Johar v. State of Uttar Pradesh**² and it deserves to be set aside.

4. Ms. Sharmila Singhai and Mr. Kawaljeet Singh Saini, learned counsel appearing for Respondent No. 3 in WPCR Nos. 50/2016 & 74/2016 and respondent No. 1 in WPCR No. 51/2016 i.e. complainant as well as Mr. Jitendra Pali, learned State counsel, would support the impugned order.

1 (2015) 6 SCC 287

2 AIR 2019 SC 2109

5. I have heard learned counsel for the parties, considered their rival submissions and went through the records.

6. 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."

7. 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 (supra) 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.

8. Reverting to the facts of the present case in light of the principles of law laid down by the Supreme Court in the aforesaid judgments (supra), it is quite vivid that from the perusal of the original records of proceedings under Section 156 CrPC that the complainant namely Raees Ahmed filed an application under Section 156(3) of CrPC in which in paragraph 15 he has stated that he has reported the matter to the Manendragarh Police, but no particulars with regard to the date of report has been mentioned.

Further perusal of the record would reveal that the complainant Raees Ahmed has sent the application to the Police Station Manendragarh, but primarily it has not been mentioned that whether, after non-registration of offences against the present petitioners, any application was sent by post to the Superintendent of Police, Koriya in compliance of Section 154(3) of CrPC. As such, in the application as well as in the proceedings under Section 156 of CrPC, there is absolute non-compliance of the provisions contained under Section 154(3) of CrPC which is the essential requirement for grant of application under Section 156(3) of CrPC. The Supreme Court in the matter of Priyanka Srivastava (supra) has emphasized the need for strictly complying with the provisions contained in Section 151(1) and 154(3) of CrPC and in absence of which, the impugned order granting the application under Section 156(3) of CrPC as well as the entire proceedings thereof deserve to be struck down.

9. Consequently, the impugned order passed by learned JMFC, Manendragarh directing registration and investigation of the aforesaid

offences against the present petitioners is hereby quashed and Crime/FIR No. 86/2016 registered at Police Station Manendragarh, Distt. Koriya against the present petitioners are also quashed.

10. With the aforesaid observations, all the three writ petitions are allowed accordingly. No cost(s).

Sd/-
(Sanjay K. Agrawal)
Judge

Harneet