

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Misc. Petition No.487 of 2014**

Amit Joshi, S/o late Shri R.K. Joshi, aged about 45 years, R/o
Qr.No.15, Type-D, Sector – 2, BALCO Town, Korba (C.G.)
---- Petitioner

Versus

1. State of Chhattisgarh, through Superintendent of Police, Korba, District Korba.
2. Station House Officer, P.S. BALCO Nagar, District Korba.
3. Deepak Jahiray, S/o Shri P.L. Jahiray, aged about 25 years, R/o House No.72, Village Durpa, Tahsil Nawagarh, District Janjgir-Champa.

---- Respondents

For Petitioner: Mr. Abhishek Sinha & Mr. Aditya Pandey, Advocates.

For Respondents No.1 & 2 / State: -

Mr. Ravi Kumar Bhagat, Deputy Govt. Advocate.

For Respondent No.3: -

None present though served.

Hon'ble Shri Justice Sanjay K. Agrawal

Order On Board

05/02/2021

1. This petition is directed against the impugned order passed by the learned Magistrate in an application filed under Section 156(3) of the CrPC and consequent registration of FIR on 8-5-2014 for offences punishable under Sections 420, 465, 468, 471 and 177 of the IPC.
2. Mr. Abhishek Sinha, learned counsel appearing for the petitioner, would submit that in a complaint under Section 156(3) of the CrPC filed by respondent No.3 against the officer of BALCO with regard to certain recruitment conducted by BALCO

alleging commission of offence under Sections 420, 465, 468, 471 and 177 of the IPC, the learned Magistrate on 29-10-2013 directed the Station House Officer, Police Station Balco Nagar to investigate the matter and if offence is found to have been committed, then to proceed further and submit final report. He would further submit that on 6-5-2014, Police Station Balco Nagar submitted final report that on detailed investigation, no cognizable offence was found to have been committed by the petitioner, yet the learned Magistrate on the request of the complainant, sought information from the Station House Officer, whether he has lodged written FIR in accordance with Section 156(3) of the CrC / in terms of the decision of the Supreme Court in the matter of Lalita Kumari v. Government of Uttar Pradesh and others¹ and consequently, FIR was registered on 8-5-2014 by Police Station Balco Nagar for the aforesaid offences which is ex facie illegal and bad in law in the light of the decision of the Supreme Court in the matter of Priyanka Srivastava and another v. State of Uttar Pradesh and others².

3. Mr. Ravi Kumar Bhagat, learned State counsel, opposes the petition and supports the impugned order.
4. None present for respondent No.3 / complainant, though served.
5. I have heard learned counsel for the parties and considered their submissions made herein-above and also went through the record with utmost circumspection.
6. The Supreme Court in Priyanka Srivastava (supra) laid down the duty and approach of the Magistrate while exercising the power

¹ (2014) 2 SCC 1

² (2015) 6 SCC 287

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) CrPC 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 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*¹ 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 Priyanka Srivastava (supra) has been followed with approval by the Supreme Court in the matter of Vikram Johar v. State of Uttar Pradesh and another³ in which their Lordships have noticed the potentiality of misuse of Section 156(3) of the CrPC 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 the light of the aforesaid legal position, it is quite vivid that in the instant case, there is only compliance of Section 154(1) of the CrPC and there is complete non-compliance of Section 156(3) of the CrPC and on the direction of the learned Magistrate, Police Station Balco Nagar submitted report on 6-5-2014 that no cognizable offence has been made out upon investigation, yet the Magistrate again

³ AIR 2019 SC 2109

directed to lodge FIR in the light of the decision in Lalita Kumari (supra) and accordingly, FIR has been lodged. Since in the investigation report submitted, no offences were said to have been committed by the petitioner, it was open to the learned Magistrate to proceed under Section 190 or 200 of the CrPC, but instead of that, the Magistrate directed for registration of FIR. Once the ingredients of Section 156(3) of the CrPC are found missing as held by the Supreme Court, the learned Magistrate could not have directed for registration of FIR under Section 156(3) of the CrPC particularly when a categorical report was submitted by Police Station Balco Nagar that no offence has been committed by the petitioner. As such, the order of the learned Magistrate is in teeth of Section 156(3) of the CrPC as well as in teeth of the judgment rendered by the Supreme Court in Priyanka Srivastava (supra) followed by this Court in the matter of Sanjay Narang v. Dr. Rashmi Priyanka and others⁴.

9. In view of the above, the impugned order passed by the learned Magistrate, dated 6-5-2014 and subsequent registration of FIR against the petitioner at Police Station Balco Nagar, Korba, dated 8-5-2014 under Crime No.160/2014 for offences punishable under Sections 420, 465, 468, 471 and 177 of the IPC are hereby quashed.

10. The petition is allowed to the extent indicated herein-above.

Sd/-
(Sanjay K. Agrawal)
Judge

Soma

⁴ Cr.M.P.No.370/2014, decided on 20-6-2019