

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.77262 of 2019

Arising Out of PS. Case No.-488 Year-2019 Thana- MOTIHARI TOWN District- East
Champaran

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Chandan Kumar Prasar, Son of Ramdayal Singh Branch Manager, Mahindra and Mahindra Financial Services Ltd., Having its Office above Kumar Agency, Near Satkar Hotel, Balua Chaowk, Motihari, P.S.- Nagar Motihari, Distt.- East Champaran and Resident of Village - Bakhari mahesh, P.O.- Bakhari Mahesh, P.S.- Kalyanpur ,East Champaran Bakharpur Jagat, Distt.- East Champaran, Pin- 845413

... .. Petitioner/s

Versus

1. The State of Bihar
2. Awadhesh Prasad Yadav Son of Sri Ramekbal Rai Resident of Village - Gokhula, P.S.- Banjaria, Distt.- East Champaran.

... .. Opposite Party/s

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with
CRIMINAL MISCELLANEOUS No. 75148 of 2019

Arising Out of PS. Case No.-488 Year-2019 Thana- MOTIHARI TOWN District- East
Champaran

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Chandan Kumar Prasar @ Chandan Kumar, Son of Ramdayal Singh Branch Manager, Mahindra and Mahindra Financial Services Ltd., having its Office above Kumar Agency, Near Satkar Hotel, Balua Chowk, Motihari, P.S-Nagar Motihari, District-East Champaran and R/o village-Bakhari Mahesh, P.O-Bakhari Mahesh, P.S.- Kalyanpur, East Champaran, Bakharpur Jagat, District-East Champaran, Pin code-845413.

... .. Petitioner/s

Versus

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2. Awadhesh Prasad Yadav Son of Sri Ramekbal Rai Resident of Gokhula, P.S- Banjaria, District-East Champaran.

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Appearance :

(In CRIMINAL MISCELLANEOUS No. 77262 of 2019)

For the Petitioner/s : Mr. Shivendra Kumar Roy, Advocate
Mrs. Sheela Sharma, Advocate

For the State : Dr. Indivar Kumari, APP

For the O.P. No.2 : Mr. Rakesh Kumar, Advocate

(In CRIMINAL MISCELLANEOUS No. 75148 of 2019)

For the Petitioner/s : Mr. Sheela Sharma, Advocate

Mr. Shivendra Kumar Roy, Advocate

For the State : Mr. Jharkhandi Upadhyaya, APP



For the O.P.No.2 : Mr. Rakesh Kumar, Advocate

CORAM: HONOURABLE MR. JUSTICE ARUN KUMAR JHA
ORAL JUDGMENT

Date : 14-07-2022

In Cr. Misc. No.77262 of 2019

Heard learned counsels for the petitioner, for the opposite party no. 2 as well learned APP for the State.

The instant petition has been filed for quashing of the First Information Report bearing Motihari Town P.S. Case No. 488/2019 dated 18.07.2019, which has been registered under Sections 341, 323, 379, 406 and 420 of the Indian Penal Code against the petitioner and 3-4 other unknown persons stated to be the employees of the company of the petitioner, namely Mahindra & Mahindra Financial Services Ltd by opposite party No.2.

It appears from the record that a complaint petition bearing Complaint Case No. 552 of 2019 was filed before the court of learned Chief Judicial Magistrate, Motihari, East Champaran, by the complainant, who is opposite party no. 2 herein, for a direction under Section 156 (3) of the Code of Criminal Procedure for registration of the FIR on the basis of his complaint.

The contents of the complaint in brief are as follows :-



One Dinanath Yadav availed a vehicle loan from the company of the petitioner- Mahindra & Mahindra Financial Services Ltd., for the purchase of Bolero Jeep bearing Registration No. BR05P8328. The petitioner and few other employees of Mahindra & Mahindra Financial Services Ltd., under a criminal conspiracy and in order to cheat the opposite party no.2, had taken signature of the opposite party no. 2 on a filled up form, which was in English. The signature of the opposite party no.2 was obtained as guarantor instead of witness and, therefore, when the opposite party no.2 received a notice dated 15.12.2018 as a guarantor, then on 18.12.2018, the opposite party no. 2 personally visited the office of the petitioner and had submitted an application that the name of the opposite party no.2 has been wrongly added as guarantor under a criminal conspiracy in order to cheat the opposite party no. 2 and hence, the opposite party no. 2 asked them to remove his name as guarantor from the form. However, the opposite party no.2 was insulted by the petitioner and other co-accused persons and on 23.02.2019, the opposite party no.2 sent a legal notice to the petitioner, which was not replied back. Subsequently, the opposite party no.2 visited the office of the petitioner and requested him for removing his name from the guarantor's form but the petitioner and other accused persons got



angry and abused the opposite party no. 2 and assaulted him physically and had also snatched a gold chain worth Rs. 33,000/-. The witnesses intervened and saved the opposite party no. 2. Thereafter, opposite party no.2 gave a written report to the Nagar Thana Motihari but the same was not entertained and then opposite party no.2 filed the instant complaint.

Subsequently, vide order dated 04.04.2019, learned Chief Judicial Magistrate sent the complaint for registration of FIR and thereafter, the FIR bearing Motihari Town P.S. Case No. 488 of 2019 has been registered on 18.07.2019.

It has been submitted on behalf of the petitioner that the FIR, which has been registered as per the directions issued under Section 156 (3) of the Code of Criminal Procedure, deserves to be quashed as it has been registered by ignoring the provisions of law as laid down by the Hon'ble Supreme Court in the case of ***Priyanka Srivastava and Another vs. State of Uttar Pradesh and Others, (2015) 6 SCC 287***, wherein a number of guidelines were issued for the Judicial Magistrates for ensuring that frivolous cases which are filed to settle personal score and to settle commercial disputes are not entertained and are rejected at the outset. In the instant case, there is violation of such guidelines as one of the guidelines was that the complaint must be supported by an



affidavit and supporting documents to show the compliance of Section 154 (1) and 154 (3) of the Code of Criminal Procedure. The learned counsel further submits that no such affidavit has been filed. Furthermore, it was also directed that prior to registration of the FIR under the provisions of Section 156 (3) of the Code of Criminal Procedure, the complainant would first approach the police station and if the police officials at the police station refuses to register the FIR, he has to send a copy to the Superintendent of Police, but no such procedure was adopted by the complainant. Learned counsel further submits that the learned Chief Judicial Magistrate committed an error in sending the complaint petition for registration of FIR when the same was not supported with an affidavit and other documents. The learned counsel further submits that even the allegations made in the FIR do not constitute an offence under any of the sections of the IPC as mentioned in the FIR and the same has been lodged as a tactics to avoid civil liability for which notice was issued to the informant by the company of the petitioner.

Learned counsel for the petitioner further submits that one Dinanath Yadav approached the company of the petitioner for availing a vehicle loan and the same was granted after execution of necessary documents and the opposite party no.2 stood as a



guarantor/surety and put his signature in English on the guarantor's form. The borrower defaulted on the payment of installments and hence, notices were sent by the company of the petitioner to the borrower as well as to his surety/guarantor, the opposite party no. 2 herein. After receipt of the notice, in order to avoid his liability, the opposite party no. 2/informant filed the complaint case bearing Complaint Case No. 552 of 2019 before the court of learned Chief Judicial Magistrate, Motihari seeking direction under Section 156 (3) of the Code of Criminal Procedure for registration of FIR, which were issued vide order dated 04.04.2019 and thereafter, Motihari Town P.S. Case No. 488 of 2019 was registered. The opposite party No. 2 claims that he did not sign as a guarantor and only put his signature as a witness and if this contention is taken on its face value, even then only a case of civil liability would arise as the same would pertain to a civil dispute. No criminal offence could be said to have been committed in this regard. Learned counsel further submits that the allegations of causing hurt or abusing or snatching the chain are patently false and have been added to give a criminal nature to the complaint, which is entirely a civil dispute by its very nature. This has been done only to harass the petitioner and his company and also to avoid any recovery proceeding for which the opposite party no. 2



may be liable as a guarantor to the loan account. Regarding assault, there is no medical report to substantiate the claim.

In support of his contention, learned counsel for the petitioner has placed reliance on the decisions of Hon'ble Supreme Court rendered in *Priyanka Srivastava and Another vs. State of Uttar Pradesh and Others reported in (2015) 6 SCC 287* and on the case of *Babu Venkatesh & Ors. vs. State of Karnataka and Another* rendered in *Cr. Appeal No. 252 of 2022 arising out of SLP (Crl.) No. 2183 of 2021*. Thus, it has been submitted by the learned counsel for the petitioner that registration of the FIR, bearing Motihari Town Case No. 488 of 2019 dated 18.07.2019 under Sections 341, 323, 379, 406 and 420 of the Indian Penal Code, does not meet the requirement of law as prescribed under Section 154 (3) of the Code of Criminal Procedure and also the law as laid down by the Hon'ble Supreme Court in the aforementioned cases. Furthermore, none of the ingredients for the offences under Sections 341, 323, 379, 406 and 420 of the Indian Penal Code are present in the case and on this account also, the FIR is bad in law. The present case is only a civil dispute and it should be treated as such. Thus, learned counsel for the petitioner submits that the aforementioned FIR be quashed in the interest of justice.



Learned counsel appearing on behalf of the opposite party no. 2 submits that the allegation made in the FIR discloses commission of offences as mentioned under the FIR and there is no illegality in the registration of the FIR. The complaint petition has been sent for registration of the FIR by following due process of law under Section 156 (3) of the Code of Criminal Procedure and the same deserves to be sustained. Hence, there is no merit in the instant petition and the same should be dismissed.

The learned APP also supports the contention of the learned counsel for the opposite party no. 2, though he concedes that there appears to be violation of the guidelines and the provisions of law as formulated by the Hon'ble Supreme Court in the case of ***Priyanka Srivastava (supra)***.

I have given my thoughtful consideration to the rival submissions of the parties. Hon'ble Supreme Court in the matter of ***Priyanka Srivastava (supra)*** has formulated the guidelines in paragraphs 30 and 31 regarding sending a petition for registration of FIR under Section 156 (3) by the court of Judicial Magistrate. It will be apt to quote paragraphs 30 and 31.

“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 the 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 Sections 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 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 [(2014) 2 SCC 1 : (2014) 1 SCC (Cri) 524] are being filed. That apart, the learned Magistrate would also be aware of the delay in lodging of the FIR”.

And the legal position as enumerated in **Priyanka Srivastava (supra)** has been again reiterated by the Hon’ble Supreme Court in the case of **Babu Venkatesh (supra)**.

It appears from the record that the opposite party no.2 did not make any application under Section 154 (1) and Section 154(3) of Cr.P.C. before filing the complaint in the court of learned Chief Judicial Magistrate under Section 156(3) for direction for registration of the FIR. There is nothing on record to show that the opposite party no.2 took steps under Section 154 (1) and 154 (3) prior to the filing application under Section 156 (3) Cr.P.C. Further no affidavit in support of his contention was filed by the opposite party no.2 regarding truthfulness of his claim and compliance of provisions under Section 154 (1) and Section 154 (3) of Cr.P.C.



In the light of guidelines, if the complaint was not supported by an affidavit, the court of learned Chief Judicial Magistrate, Motihari committed an error on record when it entertained the petition under Section 156 (3) of Cr.P.C. and sent the same for registration of the FIR.

Further, the tendency to give a colour of criminal nature to commercial transaction must be deprecated and from the facts brought on record, it is apparent that the informant/opposite party no. 2 entered into a commercial transactions with the company of the petitioner. It does not apply to senses that a person would put his signature on a paper without knowing the contents of that paper. If everybody is allowed to retract the document he has signed in his senses in a casual manner, a chaotic situation would arise as anyone could claim that he put his signature for a purpose which might be entirely different for the purpose from which he has actually put his signature.

Since the registration of FIR has been made in contravention of the specific guidelines of the Hon'ble Supreme Court, I do not want to get into the merits of the case.

In view of the discussion made hereinabove, I am of the considered view that the present proceeding brought on and continued by the FIR would be an abuse of process of law. Hence,



the FIR, bearing Motihari Town Case No. 488 of 2019 dated 18.07.2019, registered under Sections 341, 323, 379, 406 and 420 of the Indian Penal Code, is hereby quashed as the same is hit by legal bar engrafted by the Hon'ble Supreme Court in the case of ***Priyanka Srivastava (supra)*** and is against the provisions of law.

Accordingly, present petition stands allowed.

In Cr. Misc. No.75148 of 2019

The instant application has been filed for grant of anticipatory bail to the petitioner, who is apprehending his arrest in connection with Motihari Town P.S. Case No. 488 of 2019 registered under Sections 341, 323, 379, 406, 420 of the Indian Penal Code.

In the light of aforesaid order passed in Cr. Misc. No.77262 of 2019, this petition stands disposed of as having become infructuous.

(Arun Kumar Jha, J)

Rajnish/-

AFR/NAFR	N.A.F.R.
CAV DATE	N.A.
Uploading Date	28.07.2022
Transmission Date	28.07.2022

