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IN THE HIGH COURT OF ORISSA AT CUTTACK

CRLMC No.836 of 2017

Anil Kumar Agarwalla @ Mandothia *Petitioner*
Mr. Mohit Agarwal, Advocate

-versus-

State of Odisha and another ... *Opposite Parties*
Mr. Ishwar Mohanty, ASC

CORAM:
THE CHIEF JUSTICE

Order No.

ORDER
28.10.2022

Dr. S. Muralidhar, C.J.

05. 1. The prayer in the present petition under Section 482 Cr.P.C. is for quashing of Angul P.S. Case No.625 of 2016 dated 3rd December, 2016 arising out of an order dated 31st October, 2016 of the S.D.J.M., Angul in 1CC No.187 of 2016 for the offences under Sections 278, 286 and 290 of the IPC read with Section 38(3) of the Air (Prevention and Control of Pollution) Act, 1981 and Section 15 of the Environment Protection Act, 1986.
2. The background facts are that on 28th October 2016, Opposite Party No.2 filed a complaint case under Section 200 Cr.P.C. being 1CC No.187 of 2016 before the S.D.J.M., Angul accusing the Petitioner, who is the proprietor of a sweet shop at Bazarpara in Angul, of committing the aforementioned offences. It appears that there was in fact a civil dispute between the Petitioner on the one

hand and Opposite Party No.2 on the other even as per the complaint. Significantly, Opposite Party No.2 did not file any application under Section 156(3) Cr.P.C. for treating the complaint as an FIR and also the S.D.J.M. did not summon the complainant for examination under Section 200 Cr.P.C. According to the Petitioner, by the order dated 31st October 2016, the S.D.J.M., Angul sent the complaint to the Angul Police Station (PS) under Section 156 (3) Cr.P.C., on the basis of which the aforementioned F.I.R. was registered.

3. Mr. Mohit Agarwal, learned counsel appearing for the Petitioner places reliance on the decision in ***Priyanka Srivastava v. State of Uttar Pradesh (2015) 6 SCC 287*** to urge that the complaint, even if it were to be treated as an application under Section 156(3) Cr.P.C, had to be supported by an affidavit. As explained by the Supreme Court, this was a safeguard against abuse of the power thereunder.

4. Despite notice having been served, none appears on behalf of Opposite Party No.2.

5. Indeed, it is seen that there was no denial of the averments in the petition that the complaint filed by Opposite Party No.2 was not supported by an affidavit. In fact, there was no prayer for treating it as an application under Section 156(3) Cr.P.C. Therefore, the order dated 31st October, 2016 of the S.D.J.M., Angul referring the

complaint under Section 156(3) Cr.P.C. to the PS Angul for registration of the FIR was itself beyond jurisdiction.

6. Assuming that such a complaint could be treated as an application Section 156(3) Cr.P.C. then as explained by the Supreme Court in *Priyanka Srivastava (supra)*, it had to be supported by an affidavit which obviously was not. The legal positions as explained by the Supreme Court in the aforementioned case are 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 fellow 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 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 v. State of U.P. (2014) 2 SCC 1* are being filed. That apart, the learned Magistrate would also be aware of the delay in lodging of the FIR.”

7. Indeed, in the present case, in absence of an affidavit in support of a complaint, the learned S.D.J.M., Angul ought not to have entertained it at all much less passed an order under Section 156(3) Cr.P.C. requiring the P.S. Angul to register it as an FIR. Consequently, the aforementioned order dated 31st October, 2016 of the learned S.D.J.M., Angul in 1CC No.187 of 2016 and the consequential Angul P.S. Case No.625 of 2016 dated 3rd December, 2016 are hereby quashed.

8. The petition is allowed in the above terms. A copy of this order be sent to the concerned Court forthwith.

(Dr. S. Muralidhar)
Chief Justice

M. Panda

