

IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO. 1895 OF 2018

Satish D. Chavan,
Aged : 37, Occ. Business,
Res : 606, Chaitanya Sankul,
Shahapuri Lane, Kolhapur

.... **PETITIONER**

// VERSUS //

- 1) State of Maharashtra,
(through Public Prosecutor,
High Court, Bombay)
- 2) Subhash Vasantao Bhosale,
Age : 69 Years, Occ. Agri. and Busi.
R/o 42061, Bhosale Chowk,
Pandharpur, Dist. Solapur
- 3) The Central Beaura of Investigation
BS & FC, BKC, Mumbai

.... **RESPONDENTS**

Shri Subodh Desai i/b Lokesh D. Zade, Advocate for Petitioner.
Shri J.P.Yagnik, A.P.P. for Respondent/State.
Shri M.L.Patil, Advocate for Respondent No.2.
Shri H.S.Venegaonkar, Advocate for C.B.I.

CORAM : **PRASANNA B. VARALE AND**
 ANIL S. KILOR, JJ.

DATED : **JANUARY 10, 2022**

P.C.

1. In this writ petition the challenge is raised to the order dated 3rd April, 2018 passed by the learned Extra Joint Additional Sessions Judge, Pandharpur, dismissing the Criminal Revision Application No. 35 of 2014 arising out of the order dated 5th May, 2014 passed by the learned Judicial Magistrate First Class, Pandharpur below Exh.3 in Criminal Misc. Application No.98 of 2014 directing investigation under Section 156(3) of the Code of Criminal Procedure (hereinafter referred to as “Cr.P.C.”)

2. Brief facts of the present case are as follows.

3. The respondent lodged a complaint before the learned Judicial Magistrate First Class, Pandharpur, on 14th February, 2014 wherein the petitioner was arrayed as Accused No.1. The respondent nos. 3 to 6 were also arrayed as Accused.

4. The allegations in the said complaint are that the Accused No.1 is industrial consultant and had caused the complainant Shri Subhashrao to believe that the petitioner shall help him to set up a grain based alcohol manufacturing plant and for that purpose he shall raise the

finance for the same through banks. It is further alleged that for that purpose as per the advice of the Accused No.1, the complainant formed a private limited company under the name and style of Excell Krushi Prakriya Pvt. Ltd., of whose Shri Subhashrao Vasantrao Bhosale, his sons Shri Jaywant Subhashrao Bhosale and Ravindra Subhashrao Bhosale are Directors. It is further alleged that project was proposed to be set at the land of the complainant Shri Subhashrao at Mouje Adhiv Tai, Pandharpur. It is further alleged that the Accused No.1 arranged for the finance to the tune of Rs.24 Crores for the said project through the connivance of the accused no.2 Shri Ramchandra Narayandatta Tiwari i.e. then Branch Manager of the Punjab National Bank, Kasturba Market and accused no.5 Shri Manohar D. Joshi who is alleged to be the senior officer of the Punjab National Bank, Zonal Office, without there being compliance of the conditions precedent.

5. It is further alleged that at the instance of the Accused No.1 the machinery for the said plant was proposed to be purchased from the partnership firm namely M/s North India Alcobru Systems of whose the accused no.3 and 4 are partners. It is further alleged that the accused no.3 and 4 had agreed to set up the said plant on turn-key basis within 9

months. It is further alleged that the accused no.3 and 4 did not supply the total machinery and despite the same withdrawn the amounts from the loan account of the complainant's company. It is alleged that through there was no compliance of the pre-disbursement conditions and though the margin money for the same was not arranged by the complainant, the accused nos. 2 and 5 and accused no.3 and 4 and accused no.1 arranged for the disbursement of the whole loan amount in the account of the complainant's company M/s Excel Krushi Prakriya Pvt. Ltd. and withdrawn an amount of Rs.24 crores from the loan account of the Excel Krushi Prakriya Pvt. Ltd., behind the bank of the complainant, by making false documents and using the same and did not pay a single rupee out of the said amount to the complainant or other Directors of Excel Krushi Prakriya Pvt. Ltd. and thereby cheated the complainant as well as Punjab National Bank, Branch Kasturba Market, Solapur and thereby committed offences punishable under Sections 120B, 420, 468, 470, 471 read with Section 34 of the Indian Penal Code, 1860.

6. It is further alleged that despite making complaint of the same with the Superintendent of Police, no action is taken against the accused person. Therefore, the complainant alleges to have approached the

learned Judicial Magistrate First Class, Pandharpur with the said complaint.

7. The learned Judicial Magistrate First Class, Pandharpur passed an order under Section 156(3) of Cr.P.C. on 5th May, 2014 and thereby the complaint was referred to City Police Station for investigation.

8. The petitioner had challenged the order dated 5th May, 2014 by way of filing the Revision Application before learned Sessions Judge, Pandharpur on 26th May, 2014. The learned Sessions Judge, granted stay to the lower Court proceeding. It is stated that during the operation and continuance of stay order by learned Revisional Court, the police officer of the Town Police Station, Pandharpur registered the Crime being MECR No. 07/2014 for the offence punishable under Section 120-B, 420, 468, 470, 471 read with Section 34 of the Indian Penal Code against petitioners and respondent nos. 3 to 6.

9. The revision application was rejected by the impugned order dated 3rd April, 2018, the same is under challenge in this writ petition.

10. Before filing of the above referred complaint by the complainant before the Judicial Magistrate First Class, Pandharpur on 14th February, 2014, in the year 2011, the Punjab National Bank, filed the complaint against the complainant Company regarding the same loan transaction with the CBI under Sections 420, 120(b) and P.C. Act against the complainant, supplier, bank officer and M/s. Siddhivinayak Enterprises. After registration of the First Information Report, the CBI arrested the complainant, the supplier and the petitioner in the year 2012. All accused and petitioner are on bail and facing the trial.

11. We have heard the learned counsel for the respective parties.

12. Shri Subodh Desai, learned counsel for the petitioner submits that the petitioner is innocent and has not committed any offence as alleged. It is submitted that the learned trial Court failed to appreciate that the application moved by the respondent No.2, is under Section 156(3) of the Code of Criminal Procedure and without complying with the provisions of Section 154 of the Cr.P.C. the said proceeding was filed.

13. The learned counsel for the petitioner further submits that the learned trial Court erred in passing the order of re-investigation on 24/07/2014. It is submitted that the order of re-investigation and subsequent re-investigation conducted by Police is abjectly illegal and *de hors* the settled law in respect of power of learned Magistrate.

14. It is further submitted that in spite of the fact that the learned Sessions Court vide order dated 26/05/2014 had stayed the order dated 05/05/2015 directing investigation under Section 156(3) of the Cr. P.C., the First Information Report was registered on 13/01/2015, illegally and contrary to the stay order.

15. Shri Desai, learned counsel for the petitioner has further argued that there is a non-compliance of the statutory provisions and directions of the Hon'ble Supreme Court of India in the matter of *Priyanka Srivastava & anr...vs.. State of Uttar Pradesh and others*, reported in (2015) 4 SCC (Cri.) 153.

16. He lastly submits that when CBI has filed Special Case No. 2000/2012 before Sessions Court at Solapur wherein the petitioner is

accused and trial is on, parallel proceedings filed by respondent No.2 for investigation under Section 156(3) of Cr.P.C. is not maintainable. It is submitted that two FIRs filed in relation to same offence and against same accused is not permissible.

17. On the other hand, learned A.P.P. Shri Yagnik supports the impugned order passed by the learned Sessions Judge in Revision Application on 3rd April 2018, which is impugned in the present petition. The learned A.P.P. submits that the learned Revisional Court has considered the contentions raised by the petitioner and after recording the reasons the Revision Application was dismissed. Thus, he submits that no error has been committed by the learned Sessions Judge in dismissing the Criminal Revision Application of the petitioner.

18. Shri M.L.Patil, learned counsel for the respondent No.2/ complainant strongly opposed the present petition and submits that the ground raised in this petition were not raised in the Criminal Revision Application and it was not argued. He, therefore, submits that new grounds raised at this stage, are not permissible.

19. The learned counsel for the respondent No.2 further submits that in this matter the FIR was registered on a direction issued by the learned Magistrate under Section 156(3) of the Cr.P.C. at the instance of the respondent No.2. Whereas, in the proceedings initiated by CBI, it was on a complaint of Punjab National Bank. He therefore, submits that two FIRs are permissible in this case. To fortify his submission, he has relied upon a judgment of the Hon'ble Supreme Court of India in the case of *P. Sreekumar ..vs.. State of Kerala & oth*, reported in **(2018) 4 SCC 579**.

20. The learned counsel for the respondent No.2 has drawn attention to the date of passing of the judgment in the case of *Priyanka Srivastava* (supra), i.e. 19th March 2015 and thereby he submits that in the present matter the learned Magistrate issued orders for investigation under Section 156(3) of Cr.P.C. on 05/05/2014 and the FIR was registered on 13/01/2015. Thus, according to him, on the date of passing of order dated 05/05/2014 or registration of FIR, the above referred judgment in the case of *Priyanka Srivastava* (supra) was not in force.

21. He further submits that the stay granted by the Revisional Court to the order of the learned Magistrate dated 05/05/2014 was in operation till 17/12/2014, however, there was no order passed granting stay on the application moved by the petitioner on 17/12/2018 for extension of stay. As such, from 17/12/2014 to 17/01/2015 i.e. when the petitioner moved application dated 17/01/2015, for extension of stay and the learned Magistrate continued the order of stay, there was no stay. It is submitted that the FIR was registered on 13/01/2015 when there was no stay. Thus, according to him, no illegality has been committed by the police in registering the FIR.

22. Shri Venegaonkar, learned counsel for CBI submits that the trial in the case of CBI against the petitioner is going on and the same is pending.

23. To consider the rival contentions of the parties, we have perused the record and also considered the various relevant dates.

24. Before considering the contentions raised by the petitioner, at this stage, it is necessary to consider the case of the petitioner before the

Revisional Court as the present petition is arising out of the impugned order passed by the learned Sessions Judge in Revision Application filed by the petitioner.

25. On perusal of the Revision Application, it is revealed that the contentions raised by the petitioner before this Court, were not raised in the revision Application. The arguments which were advanced before the Revision Court were as follows:

- a) The learned J.M.F.C. has not applied his mind to the facts of the case and passed impugned order, which is not legal, proper and correct.
- b) The CBI filed charge-sheet under the FIR No.RCI(P)2012 against the petitioner and others for the offence punishable under Section 120-B r/w 420 of IPC and under Section 13(2) read with 13(1)(d) of the Prevention of Corruption Act, 1988. The accused No.2 and 5 are the public servants working in Punjab National Bank. So the sanction of the competent Authority under the Prevention of Corruption Act, 1988 is necessary and without the same the learned

J.M.F.C. has no power to issue directions to the concerned Police Station to conduct the investigation under Section 156(3) of Cr.P.C.

- c) Under the Prevention of Corruption Act only the Special Court has got jurisdiction to take cognizance against the public servants. Hence, the order passed by the learned J.M.F.C. is illegal and not sustainable.
- d) The learned J.M.F.C. has got no territorial jurisdiction to issue direction to the Police Station Officer to conduct the investigation under Section 156(3) of Cr.P.C.
- e) Under the prevention of Corruption Act the investigation is to be conducted by the Officer not below the rank of Deputy Superintendent of Police therefore, the investigation carried by the Police Inspector is under the Prevention of Corruption Act.

26. It is further revealed that though the FIR was registered on 13/01/2015 and as the case of the petitioner is that on the date of

registration of FIR the stay granted by the learned Revisional Court was in operation, the said argument was not advanced or made before the Revisional Court. Whereas, the impugned judgment and order dated 3rd April 2018 was passed more than three years after registration of the FIR.

27. No justification has been offered by the petitioner in this petition for not raising the said ground before the Revisional Court by amending the Revision Application. In fact, it ought to have been raised there. If the petitioner had pleaded and argued the said ground before the Revisional Court, the Revisional Court could have been more appropriately dealt with it and decided the controversy namely whether on the date of registration of FIR stay was operating or not, because according to the petitioner, there was a stay and as per the version of the respondent No.2, there was no stay when the FIR was registered.

28. In the above referred backdrop, it is clear that the plea raised by the petitioner in this petition about registration of FIR during operation of stay, against the petitioner is a new plea which was never raised or argued before the Revisional Court.

29. Similarly, the ground raised by the petitioner in this petition that two FIRs for the same offence is not permissible, was also not raised before the Revisional Court or even it was not taken in the Revision Application.

30. Same is the position about the ground raised by the petitioner that there is no compliance of directions of the Hon'ble Supreme Court of India, issued in the case of Priyanka Srivastava (supra). The aforesaid ground, the petitioner could have taken in view of the fact that the judgment passed by the Revisional Court is subsequent to the judgment in the case of *Priyanka Srivastava* (supra).

31. Because, the present petition is arising out of the order passed by the learned Sessions Judge on Revision Application, the scope of the present petition is limited to examine the legality, correctness or propriety of findings or order passed by the learned Sessions Judge. As stated above, the contentions raised in this petition were not raised in the Revision Application or it was not argued before the learned Sessions Judge, therefore, according to us, the new plea referred above, raised in this petition are beyond the scope of this petition. It is a well settled principle of law that plea or grounds which were not raised before the trial Court or Revisional Court cannot be raised first time in High Court.

32. However, though as referred above we are conscious of limited scope of jurisdiction of this Court in this petition, keeping aside technicality we propose to consider the contentions raised by both the parties.

33. The Hon'ble Supreme Court of India in the case o of *P. Sreekumar Vs. State of Kerala and others*, reported in (2018) 4 SCC 579 held thus:

“28. Their Lordships after examining all the previous case laws on the subject laid down the following proposition of law in the following words speaking through Justice N. Santosh Hegde J:

“23. Be that as it may, if the law laid down by this Court in T.T. Antony case is to be accepted as holding that a second complaint in regard to the same incident filed as a counter-complaint is prohibited under the Code then, in our opinion, such conclusion would lead to serious consequences. This will be clear from the hypothetical example given hereinbelow i.e. if in regard to a crime committed by the real accused he takes the first opportunity to lodge a false complaint and the same is registered by the jurisdictional police then the aggrieved victim of such crime will be precluded from lodging a complaint giving his version of the incident in question, consequently he will be deprived of his legitimated right to bring the real accused to book. This cannot be the purport of the Code.

24. ...

25. In the instant case, it is seen in regard to the incident which took place on 20-5-1995, the appellant and the first respondent herein have lodged separate complaints giving different versions but while the complaint of the respondent was registered by the police concerned, the complaint of the appellant was not so registered, hence on his prayer the learned Magistrate was justified in directing the police concerned to register a case and investigate the same and report back. In our opinion, both the learned Additional Sessions Judge and the High Court erred in coming to the conclusion that the same is hit by Section 161 or 162 of the Code which, in our considered opinion, has absolutely no bearing on the question involved. Section 161 or 162 of the Code does not refer to registration of a case, it only speaks of a statement to be recorded by the police in the course of the investigation and its evidentiary value.”

*29) The aforesaid principle was reiterated by this Court (Two Judge Bench) in *Surender Kaushik & Ors. vs. State of U.P. & Ors.*, (2013) 5 SCC 148 in the following words:*

24. From the aforesaid decisions, it is quite luminous that the lodgment of two FIRs is not permissible in respect of one and the same incident. The concept of sameness has been given a restricted meaning. It does not encompass filing of a counter-FIR relating to the same or connected cognizable offence. What is prohibited is any further complaint by the same complainant and others against the same accused subsequent to the registration of the case under the Code, for an investigation in that regard would have already commenced and allowing registration of further complaint would amount to an improvement of the facts mentioned in the original complaint. As is further made clear by

the three-Judge Bench in Upkar Singh, the prohibition does not cover the allegations made by the accused in the first FIR alleging a different version of the same incident. Thus, rival versions in respect of the same incident do take different shapes and in that event, lodgment of two FIRs is permissible.

30) Keeping the aforesaid principle of law in mind when we examine the facts of the case at hand, we find that the second FIR filed by the appellant against respondent No.3 though related to the same incident for which the first FIR was filed by respondent No.2 against the appellant, respondent No.3 and three Bank officials, yet the second FIR being in the nature of a counter-complaint against respondent No.3 was legally maintainable and could be entertained for being tried on its merits.

34. In the teeth of above referred well settled principle of law, we revert to the facts of the present case. Admittedly the CBI has filed chargesheet under the FIR No.RCI(E)2002 against the petitioner and the other accused persons, including the respondent No.2 herein on a complaint of Punjab National Bank. In the present matter the order was passed by the learned Magistrate under Section 156(3) of Cr.P.C., at the instance of the respondent No.2. Thus, in both the matters, the complainants are different. The FIR in this case, being in the nature of a counter complaint against the petitioner and bank officials, in view of the judgment in the case of *P. Sreekumar* (supra) the FIR in the present case is permissible.

35. Moving further, undisputedly, in this case the FIR was registered on 13/01/2015. The record shows that on the date of registration of FIR no stay was operating in Revision petition. Hence, it cannot be said that the FIR was registered contrary to stay. Furthermore, the present petition was filed in the month of April 2018. Thus, from January 2015 to April 2018 no proceeding was filed by the petitioner for quashment of the FIR.

36. The petitioner even did not amend the Revision Application raising grievance about registration of the FIR against the petitioner.

37. In this petition, no explanation has been offered for delay in making the prayer for quashment of FIR. In the above referred facts and circumstances, we are not inclined to quash the FIR after a period of more than seven years. Accordingly, we do not find any merit in the submission of the learned counsel for the petitioner as regards quashment of FIR.

38. The Hon'ble Supreme Court of India, in the case of *Priyanka Srivastava* (supra) has held thus :

“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.”

39. The judgment in the case of *Priyanka Srivastava* (supra) was passed on 19th March 2015. There cannot be any dispute about the law laid down in the case of *Priyanka Srivastava* (supra) and now it is mandatory that Section 156(3) Cr.P.C. application needs to be supported by an affidavit duly sworn by the petitioner who seeks the invocation of the jurisdiction of the Magistrate.

40. In the present matter, the order directing investigation under Section 156(3) of Cr.P.C. was passed on 05/05/2013 and in pursuance to

the same the FIR was registered on 13/01/2015. As this ground was not raised in the revision Application or argued before the learned Sessions Judge, there was no occasion for the learned Sessions Judge to deal with this point. In the circumstances, on the point which was not argued or dealt with by the learned Sessions Judge, the judgment of the learned Sessions Judge cannot be said to be illegal.

41. Moreover, as pointed out herein above from the relevant dates, it is clear that the order directing the investigation and the FIR were prior in time of the judgment in the case of *Priyanka Srivastava* (supra). Accordingly, in the peculiar facts and circumstances of this case, we reject the contention of the learned counsel for the petitioner that the order passed by the learned Magistrate dated 05/05/2014 is not sustainable in the eyes of law laid down in the case of *Priyanka Srivastava* (supra).

42. While considering the submission of the learned counsel for the petitioner that the learned Magistrate illegally and *de hors* of the settled law passed an order on 24/07/2014 directing re-investigation, it is revealed that there is no prayer made in this petition or even before the Revisional Court for quashing and setting aside the order of re-investigation dated 24/07/2014. In absence of any challenge to the order

of re-investigation, dated 24/07/2014, passed by the learned Magistrate, the said contention cannot be considered and accordingly it is rejected.

43. The ground raised by the petitioner that without seeking compliance of Section 154 of the Cr.P.C. the learned Magistrate passed an order dated 05/05/2014 directing investigation, needs to be rejected, as this point was though raised in the Revision Application it was not argued before the Revisional Court. Thus, it can safely be said that this point was given up by the petitioner before the Revisional Court. Accordingly, it cannot be considered in this petition.

44. Thus, in view of the findings recorded by this Court herein above, we do not find any merit in the present petition. Accordingly we pass the following order:

The writ petition is **dismissed**.

At the request of learned counsel for the petitioner, ad-interim relief granted by way of order dated 7th December, 2018, is extended for a period of four weeks from today.