

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

CRIMINAL APPLICATION (APL) NO.187/2016

1. Sau. Ranjana W/o Prakash Jaiswal,
aged about 49 Yrs., Occ. Business,
R/o In front of Ganapati Temple,
Lasur Naka, Gangapur, Tq. Gangapur,
Dist. Aurangabad.
2. Sau. Sharada W/o Ashok Jaiswal,
aged about 45 Yrs., Occ. Business,
R/o Nagarkhana Galli, Near Supari
Hanuman Temple, Kulmandi Chowk,
Aurangabad, Tq. and Dist. Aurangabad.
3. Pratima D/o Shankarlal Jaiswal,
aged about 43 Yrs., Occ. Business,
R/o Ward No.5, Shelu Bazar Road,
Malegaon, Dist. Washim.
4. Sau. Geeta Nandlal Jaiswal,
aged about 40 Yrs., Occ. Business,
R/o Ward No.2, Main Road
Malegaon, Dist. Washim.

... Applicants

- Versus -

1. State of Maharashtra,
through Collector, Washim.
2. State of Maharashtra,
through Police Station Officer,
Police Station Malegaon,
Tq. Malegaon, Dist. Washim.

3. Ramkishor S/o Shankarlal Jaiswal,
aged about 47 Yrs., Occ. Business,
R/o Malegaon, Tq. Malegaon,
Dist. Washim. ... Non-applicants.

Mr. A. S. Deshpande, Advocate for the applicants.
Mr. S.M. Ghodeswar, A.P.P. for Non-applicants Nos.1 and 2.
Mr. R.S. Kurekar, Advocate for Non-applicant No.3.
Mr. S.P. Bhandarkar, *Amicus Curiae*.

**CORAM : SUNIL B. SHUKRE AND
M. W. CHANDWANI, JJ.
DATE : 12.12.2022**

ORAL JUDGMENT (Per Sunil B. Shukre, J.)

Not on board toady. Taken on board. Heard finally by
consent of learned counsel for the parties.

2. This application questions the legality and correctness or
otherwise of the order dated 4.1.2016 passed by the Court of
Judicial Magistrate First Class, Malegaon, Dist. Washim thereby

directing the concerned police station to investigate the cognizable offences disclosed by the application filed under Section 156(3) of the Code of Criminal Procedure (for short “Cr.P.C.”). This application also challenges the judgment and order passed in Criminal Revision No.32/2014, which was filed by non-applicant No.3 against the order passed by the learned Magistrate directing application of non-applicant No.3 to be put up for verification on the next date.

3. The applicants and non-applicant No.3 are close relatives but several disputes, according to the applicants, are going on between them. The applicants contend that as an offshoot of those disputes and with some oblique motive, non-applicant No.3 filed an application under Section 156(3) of the Cr.P.C. making several allegations against the applicants contending that offences punishable under Sections 77, 81, 82 and 83 of the Maharashtra Prohibition Act were committed by the applicants. The applicants say that these allegations basically pertain to the alleged

violation of the conditions of liquor licence run by the applicants and these allegations have been made by non-applicant No.3 with a view to see that their liquor licence is cancelled by the authorities.

4. Initially, learned Magistrate had passed an order to the effect “put up for verification” on the application filed by non-applicant No.3 under Section 156(3) of the Cr.P.C. It was challenged by non-applicant No.3 by filing a criminal revision and non-applicant No.3 succeeded in his challenge when the Court of Additional Sessions Judge, Washim allowed the criminal revision application and remanded the matter back to the Court of concerned Judicial Magistrate with a direction to pass appropriate and speaking order on the application of the complainant. Thereafter a fresh order was passed upon fresh consideration, which is the order dated 4.1.2016 impugned herein.

5. Learned counsel for the applicants submits that learned Additional Sessions Judge ought not to have interfered in the

matter as the allegations made in the application were vague and did not disclose commission of any cognizable offences and, therefore, there was nothing wrong on the part of the learned Magistrate to direct that the application be kept for verification. He further submits that even otherwise, no cognizance whatsoever of the application filed by non-applicant No.3 could have been taken by the Judicial Magistrate as it was made by non-applicant No.3 in clear violation of the law laid down by the Supreme Court. He submits that now it is well settled law that an application under Section 156(3) of the Cr.P.C. should not be entertained by any Court of Judicial Magistrate First Class unless the application is accompanied by a separate affidavit supporting the allegations made in the complaint, sworn in in accordance with the rules of procedure. Reliance is placed upon the case of Priyanka Srivastava and another V/s. State of Uttar Pradesh and others reported in (2015) SCC 287.

6. Stand of the learned A.P.P. is that *Priyanka Srivastava (supra)* being the law of the land, it must be followed by everyone having an occasion to make an application under Section 156(3) of the Cr.P.C. or deal with it. Learned counsel for non-applicant No.3 submits that although there can be no quarrel about the principle of law laid down in *Priyanka Srivastava (supra)*, the compliance with the law could be seen to be made after verification of the complaint is ordered to be made by the concerned Court.

7. Upon consideration of the facts and circumstances of this case and also the law laid down by the Apex Court in *Priyanka Srivastava (supra)*, we are of the view that there is a great substance in the submissions of learned counsel for the applicants and there is no merit in the submissions of learned counsel for non-applicant No.3.

8. Case of Priyanka Srivastava (*supra*) clarifies the whole issue as to the manner in which an application under Section 156(3) of the Cr.P.C. seeking investigation of any cognizable case be made and dealt with. The Supreme Court has categorically held that such applications must not be entertained unless they are supported by a duly sworn in affidavit separately filed, as it found that there was a tendency amongst some complainants to file frivolous or mischievous applications for harassing some persons against whom the complainants have some grudge or some scores to be settled. Therefore, the Apex Court observed that there is a need for the learned Magistrate to remain ever vigilant with regard to the allegations made and not to issue any direction for registration of F.I.R. without proper application of mind. The Supreme Court further observed that a litigant must not be allowed to invoke authority of the Magistrate at his whim and that a principled and really aggrieved citizen with clean hands only should have free access to invoke the power of the Magistrate under Section 156(3) Cr.P.C. In other words, the emphasis of the

Apex Court has been upon having really wronged person in having free access to the authority of the Magistrate under Section 156(3) of the Cr.P.C. and barring the entry of frivolous and mischievous litigants in the Court of learned Magistrate exercising his jurisdiction under Section 156(3) Cr.P.C. Having noticed tendency to file applications intended to misuse the power of the Court, the Supreme Court felt that time had come to fix accountability in such cases, which would serve as a deterrent against such proclivity. It, therefore, held that if it is found that any application containing false allegations has been made by a person, the person should be booked under law and with that purpose in mind, the Supreme Court held that whenever an application under Section 156(3) is made, it must be supported by an affidavit duly sworn in by the applicant seeking invocation of the jurisdiction of the Magistrate under Section 156(3). The Supreme Court further held that such an affidavit when filed would make the applicant more responsible. Relevant observations of the Apex Court in this regard appearing in

paragraphs 30 and 31 of the judgment in the case of Priyanka Srivastava (supra) are relevant and for the sake of convenience, they are reproduced as under:-

“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 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 are being filed. That apart, the learned Magistrate would also be aware of the delay in lodging of the FIR.”

9. It would be clear from the above observations that the Apex Court has made it mandatory for a complainant to support his application under Section 156(3) by an affidavit so that the complainant can be held responsible and proceeded against in law when it is found that he has made false and mischievous allegations on oath.

10. The Division Bench of this Court in *Sayed Anwar Ahmed & Anr. V/s. The State of Maharashtra & Anr.* reported in **2017 ALL MR (Cri) 4457** following *Priyanka Srivastava (supra)* has underlined the importance of filing of an affidavit separately as a support to the application made under Section 156(3) Cr.P.C. holding that filing of an affidavit is not an empty formality and it must be in the manner in which it is prescribed to be filed in Chapter VII (paragraphs 1 to 5, 7 and 8) of the Criminal Manual. The Division Bench in its judgment has reproduced paragraphs 1 to 5, 7 and 8 of Chapter VII of Criminal Manual in paragraph 23 of the judgment. The Division Bench, considering the requirements of swearing in of an affidavit, observed that every affidavit must clearly specify what portion of the statement is made on declarant's personal knowledge and what portion of the statement is made on his information or belief. It also observed that particulars of the source or ground of information or belief must be disclosed and finally held that an affidavit filed without substantially complying with the requirements of

Chapter VII of the Criminal Manual cannot be said to be an affidavit filed in compliance with the directions of the Apex Court in the case of *Priyanka Srivastava (supra)*.

11. We would lay our emphasis upon the need for the criminal Courts presided over by Judicial Magistrates to carefully go through the judgment rendered in the cases of *Priyanka Srivastava (supra)* and Sayed Anwar Ahmed (*supra*) and scrupulously follow the directions and the guidelines stated therein.

12. Mr. Bhandarkar, learned counsel who happens to be present in the Court, has voluntarily offered his assistance to this Court with a view to support the cause of justice, and so we have heard him on the law point involved in this petition by treating him as an Amicus Curiae. He submits that the law laid down in *Priyanka Srivastava (supra)* has been further reinforced by the Supreme Court in the case of Babu Venkatesh and others V/s. State of Karnataka and another, Criminal Appeal No.252/2022 with other connected matters, decided on 18.2.2022. The

relevant paragraph Nos.25, 26 and 27, for the sake of convenience, are reproduced as under:-

“25. This court has clearly held that, a stage has come where applications under Section 156(3) of Cr.P.C. are to be supported by an affidavit duly sworn by the complainant who seeks the invocation of the jurisdiction of the Magistrate.

26. This court further held that, in an appropriate case, the learned Magistrate would be well advised to verify the truth and also verify the veracity of the allegations. The court has noted that, applications under Section 156(3) of the Cr.P.C. are filed in a routine manner without taking any responsibility only to harass certain persons.

27. This court has further held that, prior to the filing of a petition under Section 156(3) of the Cr.P.C., there have to be applications under Section 154(1) and 154(3) of the Cr.P.C. This court emphasizes the necessity to file an affidavit so that the persons making the application should be conscious and not make false affidavit. With such a requirement, the persons would be deterred from causally invoking authority of the Magistrate, under Section 156(3) of the Cr.P.C. In as much as if the affidavit is found to be false, the person would be liable for prosecution in accordance with law.”

13. We appreciate the assistance given to this Court by Mr. Bhandarkar, learned *Amicus Curiae* in this case.

14. Now, let us examine the order passed by the learned Magistrate in the light of the law discussed above. Upon closer examination of the application filed by non-applicant No.2, we find that it is not supported by an affidavit and so it violates the law referred to above. It appears that absence of affidavit was not noticed by learned Magistrate and that is the reason perhaps why we find the impugned order dated 4.1.2016 is passed in violation of the directions issued by the Apex Court in the cases of Priyanka Srivastava (*supra*) and Babu Venkatesh (*supra*) and also by this Court in the case of Sayed Anwar Ahmed (*supra*). Such an order cannot stand the scrutiny of law. If this is so, even the judgment and order delivered by the learned Additional Sessions Judge in Criminal Revision No.32/2014 dated 16.9.20215 could not be said to be legal and valid as the Sessions Court has interfered with the order of verification passed by the learned Magistrate. In fact, even an order of verification cannot be passed unless the basic

requirement of Section 156(3) of Cr.P.C. to be accompanied by an affidavit as laid down in the cases discussed earlier is fulfilled.

15. In the result, the application is allowed. The impugned orders are hereby quashed and set aside and the matter is remanded back to the Court of concerned Judicial Magistrate First Class at Malegaon for fresh consideration, in accordance with law. Non-applicant No.3 may appear before the concerned trial Court on 21.12.2022 at 11 a.m. Rule is made absolute in the above terms.

(M. W. CHANDWANI, J.)

(SUNIL B. SHUKRE, J.)