

THE HON'BLE DR. JUSTICE D.NAGARJUN

CRIMINAL PETITION No.5092 of 2017

ORDER:

The petitioners, who are shown as accused in Crime No.124 of 2017 on the file of Matwada Police Station of Warangal District, has challenged the FIR in Crime No.124 of 2017 on the ground that the de-facto complainant/respondent No.2 has not followed the directions given by the Hon'ble Supreme Court in **Priyanka Srivastava & Anr vs State Of U.P.& Ors**¹.

2. The facts in brief, as can be gathered from the record, would go to show that the de-facto complainant is married with the brother of petitioner No.1/A1 and after giving birth to three daughters, on account of ill-health, her husband died. After the death of her husband, the petitioners, who are brothers and other close relatives of petitioner No.1, have started harassing the de-facto complainant in respect of partition of joint family properties and differences arose on which an attempt was allegedly made on the life of the de-facto complainant and she had to leave the house along with her children. By narrating the harassment meted out by the petitioners, the de-facto

¹ (2015) 6 SCC 287

complainant has filed a complaint before the concerned Magistrate under Section 200 Cr.P.C. and the learned Magistrate has referred the said complaint to the police on 06.06..2017 at 1.00 p.m. and the police have registered the same as Crime No.124 of 2017 for the offence under Section 498-A, 304 read with 34 IPC and Section 156(3) Cr.P.C. and issued FIR. The petitioners have challenged the said FIR on the following grounds:

3. That the petitioners have not committed any offence of harassing the de-facto complainant as alleged in the complaint and that a settlement was arrived at between them and the de-facto complainant on 27.06.2015 and the same was reduced into writing in respect of sharing of the properties, whereunder the de-facto complainant has received cash in lieu of share of immovable property and subsequently she filed a suit for partition in O.S.No.133 of 2016. Therefore, partition of the properties is subject to the result of the said suit and that in order to coerce the petitioners, false case has been filed and it is also submitted that the de-facto complainant has not followed the directions given by the Hon'ble Supreme Court in **Priyanka Srivastava case (supra)**.

4. Heard both sides and perused the record.

5. Now, the basic question that was actually canvassed before the Court is that the de-facto complainant has not followed the directions of the Hon'ble Supreme Court in **Priyanka Srivastava case (supra)**. Admittedly, this case is filed subsequent to the directions of the Hon'ble Supreme Court in **Priyanka Srivastava case (supra)**, which was delivered on 19.03.2015. The Hon'ble Supreme Court in paragraph 27 has given the directions in respect of a private complaint as under:

"27. 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. 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 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.”

6. Therefore, it is to be seen that in the case on hand whether the de-facto complainant has fulfilled the said directions or not. At the first place, admittedly, the trial Court has not recorded the sworn statement of the de-facto complainant, which is mandatory as per **Priyanka Srivastava case (supra)**. Secondly, the de-facto complainant has not filed the documents to show that he filed complaint before the Station House Officer and also the higher ups.

7. Learned counsel for the de-facto complainant has submitted that during the course of hearing an affidavit is stated to have been filed before the trial Court, which goes to show that the contents of her complaint are correct to the best of her knowledge. The de-facto complainant is expected to file an affidavit that prior to approaching the Court, she has approached the police for registration of a case against the petitioners and that the police could not register the same and she is also expected to enclose the document to that extent. She is expected to file a copy of the complaint. The affidavit

filed before the Court does not disclose that she went to the police and filed a complaint. Therefore, on account of non-compliance of the directions of the Hon'ble Supreme Court in **Priyanka Srivastava case (supra)**, the FIR registered against the petitioners cannot be continued.

8. It is submitted by the de-facto complainant that the main issue between herself and the petitioners is in respect of the properties of her husband's family where her late husband is entitled to get a share. As per the record, a case in O.S.No.113 of 2016 is filed and the same is pending before the Court for partition of the said property. When the civil Court has ceased up the matter, then the de-facto complainant can agitate all her rights in the said partition suit. It is also further stated by the petitioners that an agreement was entered into between the parties in respect of sharing of the properties, wherein the de-facto complainant is also one of the party. The petitioners have filed a copy of the petition dated 23.09.2016 stating that they have approached the District Legal Services Authority for settlement of the disputes on which the District Legal Services Authority has taken up the matter as PLC.No.4700 of 2016 and an attempt was made to settle the issue outside the Court and however the de-facto complainant, who was shown as

respondent No.1 in the said PLC, was not present and thereby the matter could not be settled.

9. The petitioners have also filed a copy of the plaint in O.S.No.133 of 2016 wherein the de-facto complainant is also shown as defendant No.5. Though an attempt was allegedly made to settle the disputes in respect of sharing of the properties among the petitioners and also the de-facto complainant, the settlement could not be arrived at and ultimately a civil suit was filed and is pending before the concerned civil Court. In Crime No.124 of 2017 it is alleged by the de-facto complainant that the petitioners have thrown her out of the house and harassed her when she has demanded for partition, which is allegedly happened subsequent to filing of the suit, which is filed in the year 2013. Therefore, the motive as mentioned by the de-facto complainant in the complaint for the alleged harassment by the petitioners is not convincing.

10. In any case, without commenting on the merits of the case, it is clear that the complaint filed by the de-facto complainant under Section 200 Cr.p.C., which was referred to the police under Section 156(3) Cr.P.C., is defective, as the directions of the Hon'ble Supreme Court in **Priyanka**

Srivastava case (supra) were not followed and therefore, continuation of the proceedings against the petitioners amount to abuse of process of law and therefore, the same are liable to be quashed.

11. Accordingly, the criminal petition is allowed and the proceeding in Crime No.124 of 2017 against the petitioners on the file of Matwada Police Station, Warangal District are hereby quashed.

Miscellaneous applications, if any, shall stand closed. No costs.

DR. D.NAGARJUN, J

Date: 04.07.2022
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