IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Writ Jurisdiction Case No.775 of 2019

Arising Out of PS. Case No.-53 Year-2017 Thana- SARE District- Nalanda

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Maneesh Chandra S/o Sri Mahesh Chandra R/oG- 179/6, Rajendra Nagar (Behind Sheel Hospital), Bareilly, P.S.- Avas Vikas Police Chowki, Dist.- Bareilly, Uttar Pradesh, Pin- 243122, and having his office at 4th Floor, B-Block, Sai Corporate Bailley Road, Rukunpura, P.S.- Rajivnagar, Patna, Bihar, Pin 800014

... ... Petitioner/s

Versus

1. THE STATE OF BIHAR THROUGH PRINCIPAL SECRETARY, HOME DEPARTMENT ,GOVERNMENT OF BIHAR,PATNA Bihar
2. State of Bihar, through Director General of Police, Old Secretariat, Patna Bihar
3. Superintendent of Police, Nalanda, Bihar Bihar
4. Investigation Officer, Sare P.S. Case No. 53/2017 Bihar

... ... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr.Dayanand Singh
For the Respondent/s	:	Mr.Partha Sarthy

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CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR SINGH

ORAL ORDER

4 28-02-2023 This writ application has been filed for quashing Sare P.S. Case No. 53/2017 pending in the Court of Learned ACJM VII, Nalanda registered under sections 420, 467, 468, 504, 506, 34 of the IPC

The prosecution case in brief is that:

I) The complainant purchased a truck bearing chassis no. MAT466395GICO8326 and engine no. 3261C633507189 from the Maurya Motors Pvt. Ltd upon the persuasion of Vinay Agarwal, Sales Manager of Maurya Motors and Mukund Prasand, Sales Agent of Maurya Motors who have been addeed as Accused No. 1 and 2 respectively on 29.08.2016. Subsequent to the purchase of truck when he came along with his father, namely, Ram Kumar Singh, who is driver by profession to take the truck along with him, he found that there is no temporary cabin of driver in the said truck.

II) Thereafter the Informant has alleged that on 05.01.2017 while driving the truck, the said truck started showing some problems and the informant went ot Telaiya Motors and when job card bearing job card no. Te1Aut-K-R-1617-01093 was prepared on 05.01.2017 which has owner's name as Kamlesh Kumar, S/O Vasudev Prasad Yadav, R/o- Rage Bigha, P.O.- Kakri Ovra, Aurangabad and it showed the truck has ran 90090 KM instead the Informant has driven the said truck only for 12100 KM. That the Informant asked the accused persons on 08.01.2017 the rectify the name of owner of said truck but the Accused Persons informed the Informant that the guaranty of the vehicle has ended, thus, no benefit of guarantee can be claimed and further did not pay any heed to the requests made by the Informant.

III) Further, the Informant has alleged that there was a manufacturing defect in the tyres of the truck, however as the papers showed the warranty period to be elapsed becfause the papers showed the vehicle in the name of one Kamlesh Kumar and purchase date as 31.05.2016 and resultantly he could not get it replaced.

IV) That the informant has further alleged that despite several requests accused person did not do anything about the discrepancy in the details of owner of the vehicle and on 07.03.2017, Accused No. 1 and 2 came to the village of Informant and threatened him to seize his vehicle and demanded Rs. 50,000 for getting the truck replaced from the company, which the Informant paid to them but they did not get the truck replaced.

On the basis of aforesaid complaint the Complaint Case NO. 255(c)/2017 was filed by the Informant and Learned ACJM VII Bihar Sharif referred the said complaint to Sare Police Station under section 156 of the Code of Criminal Procedure, 1973 for registering of the Fir and thereafter Sare P.S. Case No. 53/2017 was registered under sections 420, 467, 468, 504, 506 and 34 of the IPC.

Learned counsel for the petitioner submits that even if the entire allegations made in the complaint are believed to be true at their face value, no offence as alleged would be made out. He next submits that the complainant did not file any affidavit before the court stating therein that in spite of the steps having been taken under section 154(1) and 154(3) of Cr.P.C. Police have failed to register the FIR and investigate the case. He lastly submits that the FIR is also bad for reasons that the vehicle manufactured by Tata Motors Pvt. Ltd. was sold by an authorized dealer of the Tate Motors Pvt. Ltd. Namely Mr/s Maurya Motors Pvt. Ltd. However, neither Tata Motors Pvt. Ltd nor Maurya Motors Pvt. Ltd have been made accused in the case. In absence of the company there could not have been any liability of the office bearers of the company as the provision under which the FIR had been instituted do not create any vehicle's liability.

In this case opposite party has already appeared. No counter affidavit has been filed on behalf of the state or opposite parties in spite of several indulgence. However submission of the learned counsel for the parties is that since in this case in view of the allegations made in the FIR, it cannot be said that no criminal offence is made out against the petitioners. And therefore at this stage, the FIR should not be interfered with by this hon'ble court.

Heard, rival submission of the parties, and perused the materials available on record, this court finds some substance and force in the submissions made on behalf of the petitioner. From bare perusal of the complaint petition, it is apperrant, that the complainant has nowhere stated or disclosed that the complainant had approached the police for institution of the Police Case or had complained to the higher police officials regarding non-institution of the FIR in pursuance of provision under section 154(1) and 154(3) of the Code of Criminal Procedure nor has shown affidavit in the complaint petition. In the case of *Priyanka Shrivasta and Anr. Vs. State of UP & Ors. (Supra)*, the Apex Court considered the similar question of law and observed and held as follows.

> *"27. Regard being had to the aforesaid enunciation of law, it needs to be reiterated that the learned Magistrate has to remain vigilant with regard to the allegations made and the nature of allegations and not to issue directions without proper application of mind. He has also to bear in mind that sending the matter would be conducive to justice and then he may pass the requisite order. The present is a case where the accused persons are serving in high positions in the Bank. We are absolutely conscious that the position does not matter, for nobody is above the law. But, the learned Magistrate should take note of the allegations in entirety, the date of incident and*

whether any cognizable case is remotely made out. It is also to be noted that when a borrower of the financial institution covered under the SARFAESI Act, invokes the jurisdiction under Section 156(3) Cr.P.C and also there is a separate procedure under the Recovery of Debts Due to Banks and Financial Institutions Act, 1993, an attitude of more care, caution and circumspection has to be adhered to.

28. Issuing a direction stating "as per the application" to lodge an FIR creates a very unhealthy situation in society and also reflects the erroneous approach of the learned Magistrate. It also encourages unscrupulous and unprincipled litigants, like Respondent 3 namely, Prakash Kumar Bajaj, to take adventurous steps with courts to bring the financial institutions on their knees. As the factual exposition would reveal, Respondent 3 had prosecuted the earlier authorities and after the matter is dealt with by the High Court in a writ petition recording a settlement, he does not withdraw the criminal case and waits for some kind of situation where he can take vengeance as if he is the emperor of all he surveys. It is interesting to note that during the tenure of Appellant 1 who is presently occupying the position of Vice-President, neither was the loan taken, nor was the *default made, nor was any action under the SARFAESI Act taken. However, the action under the SARFAESI Act was taken on the second time at the instance of the present Appellant 1. We are only stating about the devilish design of Respondent 3 to harass the appellants with the sole intent to avoid the payment of loan. When a citizen avails a loan from a financial institution, it is his obligation to pay back and not play truant or for that matter play possum. As we have noticed, he has been able to do such adventurous acts as he has the embedded conviction that he will not be taken to task because an application under Section 156(3) Cr.P.C is a simple application to the court for issue of a direction to the investigating agency. We have been apprised that a carbon copy of a document is filed to show the compliance with Section 154(3), indicating it has been sent to the Superintendent of Police concerned.*

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) 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 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 are being filed. That apart, the learned Magistrate would also be aware of the delay in lodging of the FIR."*

In view of the discussions made above Sare P.S. Case No. 53/2017 pending in the Court of Learned ACJM VII, Nalanda, is hereby quashed and all the subsequent orders and criminal proceedings are also quashed.

Accordingly this application stands allowed.

(Prabhat Kumar Singh, J)

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