

Form J(1)

**IN THE HIGH COURT AT CALCUTTA
Criminal Revisional Jurisdiction
Appellate Side**

**Present :
The Hon'ble Justice Bibek Chaudhuri**

CRR 873 of 2023

**Mahammad Mahafujur Rahaman Khan
@ Md. Mahafujur Rahaman @ Md
Mahafujur Rahaman Khan @ Md. Mahafujur
Khan and Another
Vs.
The State of West Bengal and Anr.**

Mr. Aniruddha Bhattacharyya
Mr. Indranuj Dutta
Mr. Asmanur Quail
Mr. Rahul Ghosahal
Mr. Bikram Basak
for the petitioners

Item No. 29

Heard & Judgment on: 08.05.2023

Bibek Chaudhuri, J.

Only allegation in the instant revision raised by the petitioner is that the Court below did not consider the specific directions of Priyanka Srivastava's case passed by the Hon'ble Supreme Court to the effect that before entertaining an application under Section 153(3)

of the Code of Criminal Procedure the petitioner has to prove that she has complied with Section 154(1) and Section 154(3) by first filing a complaint in the local P.S. and in case the local P.S. does not take any action over her complaint she sent the complaint to the higher authority of the police department.

It is further stated in Priyanka Srivastava that in an application under Section 156(3) of the Code of Criminal Procedure the averment to the above effect on the affidavit is not sufficient but the applicant must file the relevant document to show due compliance of Section 154(1) and Section 154(3) of the Code of Criminal Procedure. In the instant case, the de facto complainant failed to establish before the learned Magistrate that requirement of Section 154(1) and Section 154(3) was duly complied with. But the learned Magistrate without considering such pre-conditions laid down by the Hon'ble Supreme Court misdirected himself in sending the application under Section 156(3) of the Code of Criminal Procedure to the jurisdictional P.S. directing the Officer-in-charge to treat the complaint as FIR. Therefore, the initial order and registration of FIR is bad in law and the proceeding being G.R. Case No. 373 of 2022 is required to be quashed.

I have heard the learned advocate for the petitioner. In the instant case police submitted charge sheet against the accused

persons. It may be a fact that the guideline of Priyanka Srivastava's case was not complied with by the learned Magistrate while sending the application under Section 156(3) of the Code of Criminal Procedure but such objection out to have taken from investigation. When charge sheet has been submitted on investigation, the learned Magistrate is under obligation to take cognizance of offence either in whole or in part on perusal of the charge sheet and other materials on record. At this stage, any default in application under Section 156(3) of the Code of Criminal Procedure, which now takes shape of FIR cannot be quashed after filing of the charge sheet.

In view of such circumstances, I do not find any reason to quash the proceeding at this stage for non-compliance of the guidelines of Priyanka Srivastava's case by the learned Magistrate.

The instant revision is, therefore, summarily dismissed.

(Bibek Chaudhuri, J.)