

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CRIMINAL APPELLATE JURISDICTION****CRIMINAL APPLICATION NO.415 OF 2016**

1. Shailesh Vijay Singh
Age 29 years, Occ : Service.

2. Jeferi Rodrix Dias
Age 26 years, Occ : Student.

3. Donald Dias
Age : 23 years, Occ : Service.

4. Sadanand Yashwant Vaity
Age : 36 years, Occ : Service,

All are residing at Ganpath Vaity Chawl,
Mahim Bus Depot, Mahim, Mumbai-16.

.. Applicants

V/s.

1. State of Maharashtra
(At the instance of Senior Inspector of Police
at Mahim Police Station vide M.E.C.R. No. 1
of 2016)

2. Radha Ravindra Velenkar
Residing at : 74/52, Ganpath Vaity Chawl,
Near Janseva Rahivasi Sangh, Behind Mahim
Bus Depot, Mahim (W) – 400 016

.. Respondents

Mr. Prathamesh Naik i/by Meghashyam Kocharekar for Applicants.

Mr. Ajay Patil, APP for Respondent No.1– State.

None for Respondent No.2.

**CORAM : A. S. GADKARI AND
SHIVKUMAR DIGE, JJ.**

DATE : 13th JULY 2023.

Judgment : Per : A.S.Gadkari, J. :

1. By the present Application, under Section 482 of Cr.P.C.,
the Applicants have impugned Order dated 08.01.2016 passed in

Case No. 383/SW/2015 by the learned Additional Chief Metropolitan Magistrate, 9th Court, Bandra, Mumbai, issuing directions under Section 156(3) of Cr.P.C., *inter alia*, directing the Officer In-charge of Mahim Police Station to register complaint under Section 156(3) of Cr.P.C. and to lodge FIR and submit final report after investigation, on or before 23.03.2016.

2. Heard learned Counsel for Applicants and Mr. Patil, learned APP for Respondent No.1.

3. In the present Application Rule was issued on 03.10.2016.

Despite due service, none appears for Respondent No.2 on last three occasions. We have therefore with the assistance of learned APP perused the entire record.

4. Learned Counsel for Applicants submitted that, the complaint filed by Respondent No.2 is silent about the fact of filing prior Applications under Sections 154(1) and 154(3) of Cr.P.C. before filing the complaint. That, the complaint is not supported by an Affidavit duly sworn by Respondent No.2 who sought the invocation of the jurisdiction of the learned Magistrate. He submitted that, the complaint suffers from material illegalities and therefore, the impugned Order passed thereon needs to be quashed and set aside.

5. Mr. Patil after perusing the entire record fairly submitted that, there is no mention in the entire complaint about filing of prior applications by the Respondent No.2 under Sections 154(1) and 154(3) of Cr.P.C. That, there is no Affidavit duly sworn by the Applicants in support of her complaint on record. He submitted that, the Court may pass appropriate Orders in the interest of justice.

6. The Hon'ble Supreme Court in the case of *Priyanka Srivastava and Another Vs. State of Uttar Pradesh and Others* reported in (2015) 6 SCC 287, in paragraph Nos. 27, 30 and 31 has held as under:

“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 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.

30. *In our considered opinion, a stage has come in this country where Section 156(3) Cr.PC. 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 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.”

The decision in the case of *Priyanka (Supra)* has been further relied upon by the Hon’ble Supreme Court in the case of *Babu Venkatesh and Others Vs. State of Karnataka and Anr.* reported in (2022) 5 SCC 639.

7. Perusal of record clearly indicates that, the complaint submitted by Respondent No.2 before the Magistrate is silent about the specific mention of fact of her prior filing of applications under Sections 154(1) and 154(3) of Cr.P.C. with the concerned authorities. The said complaint is also not supported by an Affidavit duly sworn by Respondent No.2, who has sought the invocation of the jurisdiction of the learned Magistrate. The complaint therefore suffers from legal infirmity. In any case, when the complaint was not supported by an Affidavit, Magistrate ought not have entertained it under Section 156(3) of Cr.P.C. Perusal of the record further indicates that, the learned Magistrate has not taken into consideration the said vital aspects before proceeding to pass the impugned Order dated 08.01.2016.

8. We are therefore, of the considered opinion that, the continuation of the present proceedings would amount to nothing but sheer abuse of process of law.

In view thereof, Order dated 08.01.2016 passed by the learned Magistrate in Case No. 383/SW/2015 and M.E.C.R. No.1 of 2016, arising therefrom, registered with Mahim Police Station, Mumbai, is quashed and set aside.

9. Rule is made absolute in the aforesaid terms.

(SHIVKUMAR DIGE, J.)

(A.S. GADKARI, J.)

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KILAJE

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