

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO. 2375 OF 2022

Deepak Ashok Keswani

...Petitioner

Versus

The State of Maharashtra & Ors.

...Respondents

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NITIN
CHAVAN

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Mr. Subhash Jha a/w Ms. Monika Kale i/b Law Global for the
Petitioner.

Mr. J.P. Yagnik, APP for the Respondent/State.

Mr. Aarif Ali M. Ali i/b Ganesh Gole for Respondent No.3.

CORAM : SUNIL B. SHUKRE, AND
M.M.SATHAYE, JJ.

DATE : 20th APRIL 2023

P.C.

1. Rule. Rule is made returnable forthwith. Learned APP waives service for Respondent/State. Heard finally by consent of parties.

2. The main ground of attack although there have been many others, is that the order dated 26.05.2022 passed by the Judicial Magistrate First Class, Ulhasnagar directing the Police Station, Ulhasnagar to register the offences against under Section 153(3) of Cr. P.C. is in ignorance of law laid down by the Apex Court in the case of *Priyanaka Srivastava and Anr. v/s State of Uttar*

*Pradesh and Ors.*¹ which was reiterated in the case of *Babu Venkatesh and Others v/s. State of Karnataka and Anr.*²

3. The law has been followed by the co-ordinate Bench of this Court in the case of *Sayed Anwar Ahmed & Anr. v/s. State of Maharashtra and Anr.*³ wherein on a detailed discussion, various directions have been issued which must be followed by the Courts of Magistrate before the satisfaction is reached, upon application of mind, for issuance of direction under Section 156(3) of the Cr.P.C., as submitted by the learned Counsel for the Petitioner.

4. The learned Counsel for the complainant does not dispute the law so laid down. But his submission is that if the petition is allowed, the matter be remanded back to the Trial Court for fresh consideration and fresh decision in accordance with law.

5. The law laid down in the case of Priyanka Srivastava(supra) requires the Court of Judicial Magistrate to ensure that the averments made in application filed under Section 156(3) Cr.P.C. are supported by an affidavit duly sworn in by the Applicant, who seeks the invocation of jurisdiction of the Magistrate. It also requires the Magistrate to verify the truth and ascertain the veracity of the allegations and it takes a view that requiring an Applicant to file an affidavit in support of his contentions in the

1 (2015) 6 SCC 287

2 (2022) 5 SCC 639

3 2017 SCC Online Bom 3972

application filed under Section 153(3) Cr.P.C. would make him more responsible and it would go a long way in preventing filing of frivolous applications. The observations which are relevant for the purpose of this petition appear in paragraph 30 of the Judgment in Priyanka Srivastava(supra) and they read 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.”

6. Following the law, the Co-ordinate Bench of this Court in the case of **Sayed Anwar** (supra) has laid stress upon the importance of supporting the averments in the application filed under Section 153 (3) of Cr.P.C. by duly sworn in affidavit. The Division Bench also dwelt upon the manner in which the affidavit should be filed. The observations made in this regard appearing in paragraph 25 of the Judgment in **Sayed Anwar** (supra), are reproduced, for the sake of convenience, as follows:

“25. Filing of an affidavit is also not empty formality. The manner in which affidavit is to be filed is prescribed in Chapter VII of the Criminal Manual published by this Court in paragraph Nos.1 to 5, 7 and 8 :-

"1. (1) The heading of every affidavit to be used in a Court of Justice shall be "in the Court of....at.....". naming such Court.

(2) If there be a case pending in Court, the affidavit in support of, or opposition to, an application respecting it, must also begin with the heading "In the matter of the case of....." in the case.

(3) If there be no case pending in Court heading shall be : In the matter of the application of.

2. Every affidavit shall be drawn up clearly and legibly and, as far as possible, in a language which the person making it understands. It shall be drawn up in the first person and divided into paragraphs numbered consecutively, and each paragraph, as far as may be, shall be confined to a distinct subject or portion thereof.

3. (1) Every person making an affidavit shall state his full name, father's name, surname, age, profession or trade and place of residence and shall give such other particulars as will make it possible to identify him clearly.

(2) The affidavit shall be signed by him in his own hand or he shall make his finger impression thereon.

4. Unless it is otherwise provided, an affidavit may be made by any person having knowledge of the facts deposed to.

5. (1) Every affidavit should clearly specify what portion of the statement is made on the declarant's

knowledge and what portion of the statement is made on his information or belief.

(2) When a particular portion is not within the declarant's own knowledge but it is stated from information obtained from others, the declarant must use the expression "I am informed" and if it is made on belief should add "I verily believe it to be true." He must also state the source or ground of the information or belief, and give the name and address of, and sufficiently described for the purpose of identification, the person or persons from whom he had received such information.

(3) When the statement rests on facts disclosed in documents or copies of documents procured from any Court or other person, the declarant shall state the source from which they were procured and his information, or belief, as to the truth of the facts disclosed in such documents.

7. All erasures, errors, interlineations, etc, in the affidavit shall be legibly initialled and dated by the declarant.

8. (1) The Officer authorised in this behalf, shall, before administering the oath ask the declarant if he has read the affidavit and understood the contents thereof, and if the latter states that he has not read it, or appears not to understand fully, the contents thereof, or appears to be blind, illiterate or ignorant of the language in which it is written, the Officer administering the oath shall read and explain or cause some other competent person to read and explain in his presence the affidavit to the declarant in the language which both the declarant and the Officer administering the oath understood.

(2) When an affidavit is read, translated or explained as herein provided the Officer administering the oath shall

certify in writing at the foot of the affidavit that it has been so read, translated or explained in his presence and that the declarant understood the same at the time of making the affidavit and made his signature or finger impression in the presence of the Officer."

7. In the case of ***Babu Venkatesh*** (supra) also the Apex Court has laid down the same law as in the case of ***Priyanka Srivastava*** (supra).

8. In the present case, there is no dispute about the fact that the order dated 26.05.2022 impugned herein has been passed by the Magistrate without complying with the requirements of law as stated in the above referred cases and therefore, this order cannot be sustained in the eye of law. If that is so, all proceedings instituted on the basis of order dated 26.05.2022 must also go.

9. According, we pass the following order.

ORDER

(i) The petition is partly allowed in terms of prayer clause (a), which reads as under:

"a) that this Hon'ble Court may be pleased to issue a writ of certiorari and/or any other appropriate writ and/or order direction in the nature of certiorari, thereby calling for the records and proceedings concerning RCC No. 742/2022 from the court of the Ld. JMFC, Ulhasnagar and after examining the legality, validity and propriety of the same being in vogue may be pleased quash the said complaint and so also the

order dated 26.05.2022, passed by the Ld. JMFC, Ulhasnagar as well as the impugned FIR No. 267/2022 of Ulhasnagar Police Station dated 10.06.2022 which are product of fraud;”

(ii) We, however, grant liberty to the complainant to file a fresh complaint complying with all requirements of law, if he wishes to do so, within a period of two months from the date of this order and if any such complaint is filed, the learned Magistrate dealing with it shall not entertain it if it does not strictly meet all requirements of law such as application of mind, presence of all ingredients prima facie constituting the offence, supporting of all contentions made in the application by a duly sworn affidavit in the manner prescribed by law, and so on.

(iii) Consequently liberty is also granted to the Petitioner to pursue his right to prosecute the complainant on other aspects of the matter, keeping all the questions open.

(iv) Rule is made absolute in the above terms.

(M.M.SATHAYE, J.)

(SUNIL B. SHUKRE, J.)