

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

212

Pooja @ Gurinder Kaur Kainth and another

CRM-M-19106-2018 (O&M)
Decided on : 01.06.2023

... Petitioners

VERSUS

State of Punjab and another

... Respondents

Harish Verma

CRM-M-19760-2018(O&M)

... Petitioner

VERSUS

State of Punjab and another

... Respondents

Puneet Singh

CRM-M-20644-2018 (O&M)

... Petitioner

VERSUS

State of Punjab and another

... Respondents

Ram Lok and others

CRM-M-7925-2018 (O&M)

... Petitioners

VERSUS

State of Punjab and another

... Respondents

CORAM: HON'BLE MR. JUSTICE AMAN CHAUDHARY

PRESENT: Mr. Ankur Mittal, Advocate, Mr. Lalit Singla, Advocate
and Ms. Kushaldeep Kaur Manchanda, Advocate
for the petitioners in CRM-M-19760 & 20644-2018

Mr. K. S. Dadwal, Advocate for the petitioners
In CRM-M-19106-2018

Mr. Atul Goyal, Advocate for the petitioner in CRM-M-7925-2018

Mr. IPS Sabharwal, DAG, Punjab

Mr. Rahul Garg, Advocate for respondent No.2
In CRM-M-7925-2018

Mr. Jaitej Pratap Mittal, Advocate /Legal Aid Counsel
for the complainant in CRM-M-19106, 19760 & 20644-2018

AMAN CHAUDHARY, J.

1. The question of law involved in the present cases being common, the same are being decided together.

CRM-M-19760, 19106 & 20644-2018-1st case

2. Challenge in the present petitions is to the common order dated 26.04.2018, passed by Nyayadhikari Gram Nyayalaya, Nangal, as well as consequential FIR No. 58 dated 27.04.2018 registered under Sections 295-A, 499 and 500 IPC at Police Station Nangal, District Rupnagar.

CRM-M-7925-2018-2nd case

3. Challenge in the present petition is to the order dated 30.01.2018, Annexure P-8, passed by Judicial Magistrate First Class, Shri Anandpur Sahib, Rupnagar, and consequential proceedings including registration of FIR No. 19 dated 12.02.2018, under Sections 420, 467, 468, 471 and 120-B IPC at Police Station Nurpur Bedi, District Rupnagar.

4. Shorn of unessentials, the facts in the 1st case are that a video of a song named “Jeeju” was released, wherein the petitioner No.1 in CRM-M-19106-2018 is depicted beating up her drunk husband, who she imagined to be Yamraj, a role portrayed by the petitioner in CRM-M-19760-2018, with a ‘gada’. The song is said to have hurt the religious feelings of the complainant, an advocate by

profession. Aggrieved complainant, filed an application under Section 156(3) CrPC, wherein direction was issued for registration of FIR against the petitioners.

5. In the 2nd case, the petitioners and respondent No.2 are real brothers. As per the Will dated 11.09.1981 of their maternal uncle, half the share of his movable and immovable property was to be transferred to petitioner No.1, and the rest to petitioner Nos. 2 to 5. Whereas, vide a subsequent Will dated 18.09.1981, the entire property was to be divided equally amongst all the petitioners. The complainant-respondent No.2, who was the 6th brother was not getting any share as per either of the Will. A suit was accordingly filed by him against the present petitioners alleging that both the Will were forged and fabricated. However, the trial Court held the Will dated 18.09.1981 to be by way of undue influence. An appeal was preferred by the petitioners against the order of civil Court and during the *lis* being pending, an application under Section 156(3) Cr.P.C. was filed by respondent No.2 seeking registration of FIR.

6. Learned counsel for the petitioners in the 1st case would submit that in the application filed under Section 156(3) CrPC, the complainant had not averred that he had approached the police authorities prior to filing of the same. In the 2nd case, though it was mentioned that the complainant-respondent had approached the police, however no document was filed alongwith the application to substantiate. Further, the trial Court had decided the suit on 19.08.2017, the appeal against which was filed in November, 2017 and notice was issued on 29.11.2017. There was an order passed on 03.01.2018, wherein it has been recorded that the complainant had appeared in person on the said date, but in the application filed on 30.01.2018 under Section 156(3) Cr.P.C., this fact of challenge to the civil decree was concealed. The Magistrate also failed to verify as

to whether the complainant had, as a matter of fact, approached the police and if at all, the outcome thereof. It was further assiduously urged by the learned counsel in both the cases, that the applications in question filed under Section 156(3) Cr.P.C. were not accompanied by affidavits of the respective complainants, as mandated, the compliance of which, even the Magistrate was bound to ensure. In this regard, reliance was placed on the judgments of Hon'ble The Supreme Court in **Priyanka Srivastava vs. State of U.P.**, (2015) 6 SCC 287, **Vikram Johar vs. State of U.P.**, (2019) 14 SCC 207 and **Babu Venkatesh vs. State of Karnataka**, (2022) 5 SCC 639.

7. While assailing the impugned order, the submission advanced in the 1st case, was that it is discernible therefrom that the Magistrate without even having viewed the song in question, formed a prima facie opinion that an offence had been committed and directed registration of FIR against the present petitioners, by ignoring that it is only if an act that is a malicious and deliberate attempt to outrage the religious feelings of one class, Section 295-A IPC would be attracted. To buttress the assertion, he relied on the judgments in **Ramji Lal Modi vs. State of U.P.**, 1957 SCR 860, **Mahendra Singh Dhoni vs. Yerraguntla Shyamsundar**, (2017) 7 SCC 760 and **Priya Prakash Varrier vs. State of Telangana**, (2019) 12 SCC 432. It was further submitted that despite service, respondent No.2 did not put in appearance, which shows that the application was merely filed to harass the petitioners, by levelling false and frivolous allegations.

8. In the 2nd case, the contention raised was that it is a judgment of civil Court wherein the Will in question was found to be as a result of undue influence and there was no finding that it was by way of forgery, as was alleged, but the Magistrate without verifying the fact of it having been appealed against or attained

finality, wrongly directed registration of FIR. During the interregnum, the said judgment even stands set aside by the Appellate Court vide judgment dated 15.11.2019. The basis of the said order directing registration of FIR itself no longer exists, is yet another ground for seeking quashing of the FIR. The application was filed with ulterior motive and merely to settle scores.

9. The learned Counsel would submit that the impugned orders passed in these cases are literally identically worded and do not reflect application of mind by the Magistrate. In this regard reference was made to **Anil Kumar vs. M.K. Aiyappa**, (2013) 10 SCC 705, **Maksud Saiyed vs. State of Gujarat**, (2008) 5 SCC 668, **Ashokbhai Chandrakantbhai Gandhi and Anr vs. State of Gujarat and others**, 2017 (3) GLR 1898, **Lalaram vs. State of U.P.**, 2020 SCC OnLine All 1497, **Brinda Karat vs. State (NCT of Delhi)**, 2022 SCC OnLine 1775, **Radhey Shyam Bharti vs. State of U.P.**, 2022(3) ILR (Allahabad) 195 and **Usha Chakraborty vs. State of W.B.**, 2023 SCC OnLine SC 90.

10. Though while resisting the petitions, it could not be refuted by the learned State counsel assisted by counsel for the complainants that there was any document to evidence that the police authorities had been approached prior to filing the applications under Section 156(3) CrPC and that affidavits were attached thereto, on the other hand, it was canvassed that there is no requirement of first approaching the police authorities before filing application under Section 156(3) CrPC and filing of affidavit along with the application is not a statutory requirement but is based only on the observations made in the judgment in **Priyanka Srivastava (supra)**, to make the complainant liable for prosecution in case allegations are found to be false, is thus a curable defect. The complainant can be prosecuted even otherwise, if found to have given false evidence or

complaint. The directions were passed keeping in view the particular facts of the said case, as there were multiple complaints filed by the complainant and as per Section 32 of the SARFAESI Act, there was a protection of action taken in good faith, which the Magistrate should have kept himself alive to before venturing into directing registration of FIR under Section 156(3) CrPC. The complainant has two options, either to file a complaint to the police or approach the Magistrate under Section 156(3) Cr.P.C. Further urged that the Magistrate has three options available while adjudicating such an application, either to refer: (i) it to the police for registration of the case and investigation, if a cognizable offence is made out; or (ii) if non-cognizable offence is made out, to keep it with himself or (iii) if no offence is made out, can dismiss the application. Recording of reasons for a particular decision under Section 156(3) Cr.P.C. are not necessary. The judgment in **Priyanka Srivastava** (supra) was also not found mentioned in the subsequent judgment in **HDFC Securities Ltd. vs. State of Maharashtra**, (2017) 1 SCC 640.

11. To bolster the aforesaid submissions, reliance was placed on the judgments in **M/s Sujan Multiports Ltd. vs. State of Haryana** 2019 SCC OnLine P&H 6502, **Sobren Singh vs. State of U.P.**, 2005 SCC OnLine All 1490, **Samaj Parivartan Samudaya vs. State of Karnataka**, (2012) 7 SCC 407, **State of Gujarat vs. Girish Radhakrishnan Varde**, (2014) 3 SCC 659, **Ramdev Food Products Private Limited vs. State of Gujarat**, (2015) 6 SCC 439, **Minu Kumari vs. State of Bihar**, (2006) 4 SCC 359, **Vinubhai Haribhai Malaviya vs. State of Gujarat** 2020(1) RCR (Criminal) 1, **Suresh Chand Jain vs. State of Madhya Pradesh**, 2001(2) SCC 628, **Hemant Yashwant Dhage vs. State of Maharashtra**, 2016(6) SCC 273, **Madhu Bala vs. Suresh Kumar**, 1997(8) SCC

476, **Neeharika Infrastructure (P) Ltd. vs. State of Maharashtra**, 2021 SCC OnLine SC 315, **Mohd. Yousuf vs. Smt. Afaq Jahan**, 2006(1) SCC 627 and **M/s. MMTC Ltd. vs. M/s Medchl Chemicals & Pharma (P) Ltd**, 2002(1) RCR (Criminal) 318.

12. In rebuttal, learned counsel submits that the two options that the learned opposite counsel had referred to, available with the complainant are in fact under Sections 154 and 200 Cr.P.C and not under Sections 154 and 156 CrPC, as in order to approach the Magistrate under 156(3) Cr.P.C, he is obliged to first go to the police under Section 154 Cr.P.C. An application once filed under Section 156(3) Cr.P.C., relates to the investigation, whether upon a direction to register the FIR or to monitor it, as held by Hon'ble The Supreme Court in **Sakiri Vasu v. State of U.P.**, (2008) 2 SCC 409. By placing reliance on the judgments in the cases of **State of Haryana v. Bhajan Lal**, 1992 Supp (1) SCC 335, in particular to category of cases illustrated in (1), (3) and (7) of para 102, **Krishna Lal Chawla vs State of U.P.**, (2021) 5 SCC 435 and **Subrata Roy Sahara vs. Union of India**, (2014) 8 SCC 470, it was vehemently contended that by filing the applications by the complainant, an attempt was made to browbeat, harass and humiliate the petitioners and permitting such proceedings to continue would amount to abuse of process of law.

13. Heard the learned Counsel for the parties at length and with their able assistance perused the case files.

14. It would be apposite to make a reference to Sections 154 and 156(3) Cr.P.C., which read thus:

“154. Information in cognizable cases-

(1) Every information relating to the commission of a

cognizable offence, if given orally to an officer in charge of a police station, shall be reduced to writing by him or under his direction, and be read Over to the informant; and every such information, whether given in writing or reduced to writing as aforesaid, shall be signed by the person giving it, and the substance thereof shall be entered in a book to be kept by such officer in such form as the State Government may prescribe in this behalf.

(2) A copy of the information as recorded under sub- section (1) shall be given forthwith, free of cost, to the informant.

(3) Any person aggrieved by a refusal on the part of an officer in charge of a police station to record the information referred to in subsection (1) may send the substance of such information, in writing and by post, to the Superintendent of Police concerned who, if satisfied that such information discloses the commission of a cognizable offence, shall either investigate the case himself or direct an investigation to be made by any police officer subordinate to him, in the manner provided by this Code, and such officer shall have all the powers of an officer in charge of the police station in relation to that offence.

156. Police officer's power to investigate cognizable case.

(1) Any officer in charge of a police station may, without the order of a Magistrate, investigate any cognizable case which a Court having jurisdiction over the local area within the limits

of such station would have power to inquire into or try under the provisions of Chapter XIII.

(2) No proceeding of a police officer in any such case shall at any stage be called in question on the ground that the case was one which such officer was not empowered under this section to investigate.

(3) Any Magistrate empowered under section 190 may order such an investigation as above- mentioned.”

15. A profitable reference can be made to the judgment in **Sakiri Vasu** (supra), wherein Hon’ble The Supreme Court, elucidately interpreted the provisions of Sections 154 as well as 156(3) Cr.P.C., and held that a person aggrieved by the inaction on part of police station in not registering an FIR, has his first remedy to approach the Superintendent of Police, under Section 154(3) Cr.P.C. or any other officer as referred to in Section 36 Cr.P.C. by making an application in writing. It is only thereafter, can he approach a Magistrate under Section 156(3) Cr.P.C. A further remedy is also envisaged in the Code by filing a criminal complaint under Section 200 Cr.P.C. An application having been filed before the Magistrate under Section 156(3) Cr.P.C., can be preferred for a grievance being raised on account of non-registration of FIR or in case there is no proper investigation being carried out. The ambit of aforesaid provision being very wide would include all incidental powers necessary for ensuring a proper investigation, as when any power is expressly granted by the statute it impliedly includes, even without special mention, every power and control, the denial of which would render the grant itself ineffective.

16. The Constitution Bench of Hon'ble The Supreme Court in the case of **Lalita Kumari vs. State of U.P.**, (2014) 2 SCC 1, had held that a police officer cannot refuse to register an FIR if it discloses commission of a cognizable offence, however, in exceptional cases, before registering the FIR, the preliminary enquiry by the concerned police officer was held to be permissible only to ascertain whether the information reveals any cognizable offence. Reiterating the above in **Priyanka Srivastava** (supra), Hon'ble The Supreme Court finding a scenario which was not only disturbing but also having a potential to create a stir with regard to unscrupulous, unprincipled and deviant litigants knocking the doors of the Court and taking recourse to Section 156(3) Cr.P.C. in a routine procedure, observed that the Magistrate had a duty cast that cannot be marginalized and the order directing registration of FIR warrants application of judicial mind. It has to be borne in mind by the Magistrate that sending the matter would be conducive to justice and in appropriate cases, the Magistrate would be well advised to verify the truth and also verify the veracity of the allegations, while taking note of the same in entirety. Having regard to the enunciation of law, it was reiterated that the Magistrate has to remain vigilant with regard to the nature of allegations made and not to issue directions without application of mind. It is for the purpose of ensuring that fellow citizens are not harassed by pervert litigants and a litigant at his own whim cannot involve the authority of the Magistrate. A stage had come in the country where the application filed under Section 156(3) Cr.P.C. must be supported by an affidavit duly sworn by the applicant, who seeks to involve the jurisdiction of the Magistrate, so that the said person is conscious that in case it is found to be false he will be liable for prosecution. It is necessary that before filing a petition under Section 156(3) Cr.P.C., there must be a prior application filed

under Sections 154(1) and 154(3) Cr.P.C. Both the aspects should be clearly spelt out in the application and necessary documents to that effect shall be filed. Most pertinently, the order passed was directed to be sent to the Chief Justices of the High Courts for circulation amongst the Sessions Judges and Magistrate, so that they can remain more vigilant and diligent while exercising the power under Section 156(3) Cr.P.C. Relying on the dictum in **Priyanka Srivastava** (supra), Hon'ble The Supreme Court in the case of **Vikram Johar** (supra), observed that the potentiality of misuse of Section 156(3) to harass those, who are entrusted with various statutory functions was noticed. The person making the allegation should take responsibility of what they have said in the complaint, thus, the application under Section 156(3) Cr.P.C. has to be supported by an affidavit.

17. The law expounded in **Priyanka Srivastava** (supra), was followed by Hon'ble The Supreme Court in **Babu Venkatesh** (supra), whereby the judgments and orders of the High Court upholding the order passed by the Magistrate were set aside, as it failed to take into consideration the legal position as enunciated in the aforesaid case and the petitions were dismissed by merely observing that serious allegations were made in the complaint. The Magistrate was found to have totally failed to consider the mandate in the aforesaid judgment, while passing the order under Section 156(3) Cr.P.C. as the complaint was not supported by an affidavit, thus, he ought not to have entertained the application. It has been categorically held that the Magistrate would be well advised to verify the truth and veracity of the allegations and prior to filing a petition under Section 156(3) Cr.P.C., there have to be applications Sections 154(1) and 154(3) Cr.P.C.

18. Incontrovertibly, there was non-adherence of two germane aspects involved in the present cases, to which the Magistrate appears to have been

oblivious, *first*; being that without following the procedure envisaged under Section 154 CrPC, the complainants had embarked on filing applications under Section 156(3) Cr.P.C., *secondly*; the same were not even accompanied by a duly sworn affidavit of the complainant, as necessitated, both of these being pre-requisite to be mandatorily and meticulously followed as were the unambiguous directions in **Lalita Kumari, Sakiri Vasu, Priyanka Srivastava and Babu Venkatesh** (supra), with respect to which, the Magistrates were also required to remain more vigilant and diligent while exercising the power under Section 156(3) Cr.P.C.

19. It is evident that the Compact Disc containing the song, was not even viewed by the Magistrate, but still he reached the conclusion that the offence was made out, is unfounded as per law laid down by the Constitution Bench of Hon'ble The Supreme Court in **Ramjilal Modi** (supra), that, "Section 295A does not penalise any and every act of insult to or attempt to insult the religion or the religious beliefs of a class of citizens but it penalises only those acts of insults to or those varieties of attempts to insult the religion or the religious beliefs of a class of citizens, which are perpetrated with the deliberate and malicious intention of outraging the religious feelings of that class. Insults to religion offered unwittingly or carelessly or without any deliberate or malicious intention to outrage the religious feelings of that class do not come within the section. It only punishes the aggravated form of insult to religion when it is perpetrated with the deliberate and malicious intention of outraging the religious feelings of that class." Further that, "the language employed in the section is not wide enough to cover restrictions, both within and without the limits of constitutionally permissible legislative action affecting the fundamental right guaranteed by Article 19(1)(a) of the

Constitution.” Based on the above ratio, Hon’ble The Supreme Court in **Mahendra Singh Dhoni** (supra) quashed the proceedings against the petitioner while observing that it is clear as crystal that Section 295-A IPC does not stipulate everything to be penalised and any and every act would tantamount to insult or attempt to insult the religion or the religious beliefs of class of citizens, and in **Priya Prakash Varrier** (supra) that the allegations even if it is true would not come within the ambit and sweep of Section 295-A IPC.

20. Referring to the 2nd case, the direction for registration of FIR was primarily on account of a civil Court decree, wherein the Will in question was found to be executed by undue influence and not having been held to be forged as had been alleged, however, the said judgment had not attained finality, a factum which was concealed by the complainant, as he was completely in the know and knowledge of it, having appeared before the appellate Court on 03.01.2018, while the application was filed on 30.01.2018. In **S.P. Chengalvaraya Naidu vs. Jagannath**, (1994) 1 SCC 1, it was held by Hon’ble The Supreme Court that, “A litigant, who approaches the court, is bound to produce all the documents executed by him which are relevant to the litigation. If he withholds a vital document in order to gain advantage on the other side then he would be guilty of playing fraud on the Court as well as on the opposite party.”

21. It is worthwhile to refer to the catena of judgments by Hon’ble The Supreme Court and the High Courts relating to application of mind by the Magistrate while exercising the power under Section 156(3) CrPC. In **M.K. Aiyappa** (supra), Hon’ble The Supreme Court, observed that, “We may first examine whether the Magistrate, while exercising his powers under Section 156(3) Cr.P.C., could act in a mechanical or casual manner and go on with the

complaint after getting the report. The scope of the above mentioned provision came up for consideration before this Court in several cases. This Court in Maksud Saiyed case (supra) examined the requirement of the application of mind by the Magistrate before exercising jurisdiction under Section 156(3) and held that where a jurisdiction is exercised on a complaint filed in terms of Section 156(3) or Section 200 Cr.P.C., the Magistrate is required to apply his mind, in such a case, the Special Judge/Magistrate cannot refer the matter under Section 156(3) against a public servant without a valid sanction order. The application of mind by the Magistrate should be reflected in the order. The mere statement that he has gone through the complaint, documents and heard the complainant, as such, as reflected in the order, will not be sufficient. After going through the complaint, documents and hearing the complainant, what weighed with the Magistrate to order investigation under Section 156(3) Cr.P.C., should be reflected in the order, though a detailed expression of his views is neither required nor warranted. We have already extracted the order passed by the learned Special Judge which, in our view, has stated no reasons for ordering investigation.”

22. In **Radhey Shyam Bharti** (supra) it was held that, “...The Magistrate has to apply his mind to the entire material before him in order to ascertain whether commission of any cognizable offence is prima facie made out so as to warrant trial of the opposite party and he cannot direct registration of an F.I.R. merely for the reason that the police report mentions that no F.I.R. has been registered previously...”. It was held in **Lalaram** (supra) that the Magistrate shall pass the order with due application of judicious mind. In re: **Ashokbhai Chandrakantbhai Gandhi** (supra), it was observed and held that remedy under Section 156(3) is not of a routine nature but exercise of powers therein require

total application of judicial mind and that while passing an order under Section 156(3) Cr.P.C., the Magistrate shall record a short order disclosing the reasons to send for investigation.

23. It was observed in **Shri Subhkaran Luharuka vs. State (Govt. of NCT of Delhi)** 2010(7) RCR (Criminal) 595, that there are pre-requisites to be followed by the complainant before approaching the Magistrate under Section 156(3) of the Code which is a discretionary remedy as the provision proceeds with the word "May", thus, the Magistrate is required to exercise his mind while doing so, who should pass orders only if he is satisfied that the information reveals commission of cognizable offences and also about necessity of police investigation for digging out of evidence neither in possession of the complainant nor can be procured without their assistance.

24. Considering the impugned orders passed in the present cases, in light of the exposition of law, the reflection of application of mind is conspicuously missing therein, as evidently the Magistrate had neither assimilated nor verified the truth and veracity of the allegations and merely mentioned that prima facie, an offence was made out, that too without even having watched the questioned song, which purportedly had hurt the religious feelings of the complainant, while it is settled that in such an act, there must be a malicious and deliberate attempt to outrage the religious feelings of one class as held in **Ramji Lal Modi, Mahendra Singh Dhoni and Priya Prakash Varrier** (supra). Likewise, the direction in the 2nd case, had been given for registration of FIR, based on the decree of the civil Court, even though there was no finding recorded of forgery of Will in it and that too without verifying whether any challenge was made thereto or it attained finality, which infact now stands set aside, a fact undisputed. That apart, the

complainant-respondent in order to gain advantage, had also intentionally concealed the factum of the appeal having been filed against the said decree, to which he was privy, as divulging of the said information would have not produced the desired result of direction to register FIR, which in itself is sufficient to disentitle him to any relief, he having not approached the Court with clean hands. On factual foundation, the ingredients of the offence not being satisfied, the impugned orders are palpably erroneous. Hon'ble The Supreme Court in **Usha Chakraborty** (supra) had held that where the allegations are vague and do not carry the essential ingredients to constitute the alleged offences, it cannot lead to the registration of FIR based on an application filed under Section 156(3) Cr.P.C.

25. The record of the 1st case reveals that complainant-respondent being duly served, there was no representation on his behalf, except on one date i.e. 12.07.2019, when an advocate had put in appearance, without any authorization filed, as recorded in the order dated 18.04.2022, whereupon fresh notice was issued to him and when despite service, none had appeared, this Court vide order dated 09.03.2023 appointed the legal aid counsel to represent him and assist the Court.

26. Hon'ble The Supreme Court in **Chanchalpati Das vs. State of W.B.**, 2023 SCC OnLine SC 650, observed that, "We would like to add that just as bad coins drive out good coins from circulation, bad cases drive out good cases from being heard on time. Because of the proliferation of frivolous cases in the courts, the real and genuine cases have to take a backseat and are not being heard for years together. The party who initiates and continues a frivolous, irresponsible and senseless litigation or who abuses the process of the court must be saddled with exemplary cost, so that others may deter to follow such course..."

27. Hon'ble The Supreme Court elucidated, the plight of a litigant caught in the web of frivolous proceedings in **Subrata Roy Sahara** (supra) by observing that, "...One needs to keep in mind, that in the process of litigation, there is an innocent sufferer on the other side, of every irresponsible and senseless claim. He suffers long drawn anxious periods of nervousness and restlessness, whilst the litigation is pending, without any fault on his part. He pays for the litigation, from out of his savings (or out of his borrowings), worrying that the other side may trick him into defeat, for no fault of his. He spends invaluable time briefing counsel and preparing them for his claim. Time which he should have spent at work, or with his family, is lost, for no fault of his..." While the Court's ruling pertained to civil proceedings, these observations ring true for the criminal justice machinery as well."

28. In so far as the judgments relied upon by the learned State counsel as well as counsel for the complainant, are concerned, the same are being referred to hereunder;

29. In **HDFC Securities Ltd.** (supra), the challenge to the order passed by the Magistrate under Section 156(3) Cr.P.C. was not laid on the ground of application not having been filed by adopting the procedure as envisaged under CrPC or that no affidavit in support had been submitted, rather the same was on merits, the case involved a civil dispute of unauthorized and fraudulent trading from the account of the complainant, which was opposed on the ground of petition being premature, since it was at pre-cognizance stage and the High Court refused to quash the proceedings, finding no flaw or illegality in the impugned order.

30. In **M/s Sujan Multiports Ltd.** (supra), with regard to the judgment in **Priyanka Srivastava** (supra), it has been observed that, "...Hence, this

judgment of the Hon'ble Supreme Court does not lay down, as a precedent, that taking of affidavits and finding the veracity and truth of allegations by a Magistrate is a 'sine qua non' for passing order under Section 156(3) Cr.P.C. This has been left to the discretion of the Magistrate, if considered appropriate in a particular case; but only as an advisory. That discretion is always there otherwise also. Still further insisting upon affidavits at the stage of Section 156(3) Cr.P.C may not be otherwise desirable; because an affidavit is a sworn statement, which if submitted before the Magistrate, may not be possible for him to ignore at that time; even if it turns out to be false later on." However, Hon'ble The Supreme Court in **Babu Venkatesh** (supra), has reiterated the law laid down in the **Priyanka Srivastava** (supra) and in no uncertain terms held that, "From the perusal of the complaint it can be seen that, the complainant/respondent No. 2 himself has made averments with regard to the filing of the Original Suit. In any case, when the complaint was not supported by an affidavit, the Magistrate ought not to have entertained the application under Section 156 (3) of the Cr.P.C. The High Court has also failed to take into consideration the legal position as has been enunciated by this court in the case of **Priyanka Srivastava v. State of U.P.** (supra), and has dismissed the petitions by merely observing that serious allegations are made in the complaint."

31. The judgment in **Sobren Singh** (supra), was passed in the year 2005 by Allahabad High Court, wherein it was though observed that no prior complaint under Section 154(1) and 154(3) was required for filing complaint under Section 156(3) Cr.P.C., but Hon'ble The Supreme Court in **Priyanka Srivastava** and **Babu Venkatesh** (supra) has unequivocally laid down the mandate, while elucidating that before filing complaint under Section 156(3) Cr.P.C., the

complainant ought to have approached the police authorities under Section 154 Cr.P.C.

32. The issue that arose in **Samaj Parivartan Samudaya** (supra) was not regarding Section 154 and 156(3) Cr.P.C. and Hon'ble The Supreme Court had given observations with regard to the setting in motion of the criminal machinery and the procedure laid down under Section 200 Cr.P.C.

33. In **Girish Radhakrishnan Varde** (supra), Hon'ble The Supreme Court has held that after the registration of FIR under Section 154 Cr.P.C. and having completed the investigation by submitting the final report, the Magistrate does not have the power to add or amend Sections of IPC.

34. Hon'ble The Supreme Court in **Ramdev Food Products Private Limited** (supra) was not dealing with the aspect as had been drawn out in **Priyanka Srivastava and Babu Venkatesh** (supra), with regard to the manner in which the complaint under Section 156(3) is to be filed, as the issue was with regard to the difference between the powers under Sections 202 and 156 Cr.P.C., and it was also observed that the Magistrate is required to apply his judicial mind while exercising power under Section 156(3) Cr.P.C.

35. In **Vinubhai Haribhai Malaviya** (supra), it was held by Hon'ble The Supreme Court that the Magistrate had wide powers under Sections 156(3) Cr.P.C. to ensure proper investigation that includes the power to order further investigation. Neither was the adjudication with regard to the manner in which the complaint under Section 156(3) Cr.P.C. is to be filed nor the power to be exercised thereunder. In **Suresh Chand Jain** (supra), a judgment delivered in the year 2001, it was held that there was no requirement to examine the complainant on oath before passing an order to register an FIR under Section 156(3) Cr.P.C.

Minu Kumari (supra), was a case wherein the Additional Sessions Judge had set aside the order on the ground that there was no power of recalling under Section 360(2) Cr.P.C., it was held that the High Court should have exercised the power under Section 482 Cr.P.C. for rectifying the error, as the summons were mistakenly issued by the Magistrate.

36. Hon'ble The Supreme Court in **Hemant Yashwant Dhage** and **Madhu Bala** (supra), held that if directions are issued by the Magistrate for investigation under Section 156(3) Cr.P.C. it shall also include direction for registration of FIR. In **Neeharika Infrastructure** (supra), Hon'ble The Supreme Court laid down various guidelines where High Court would be justified in passing interim order either staying further investigation in FIR/complaint or interim order in nature of no coercive step.

37. Hon'ble The Supreme Court in **Mohd. Yousuf** (supra) had observed that the Magistrate before taking cognizance can order investigation under Section 156(3) of the Code and at that time, he is not to examine the complainant on oath and that it is the duty of the officer incharge of the police station to register FIR, even if the Magistrate does not say so in so many words while directing investigation under the aforesaid provision, and in the case of **M/s. MMTC Ltd.** (supra) the issue being adjudicated with regard to a complaint filed by a company, it was held that the company is *de jure* complainant and must associate a human being as *de facto*.

38. As is apparent from the facts and issues involved in the above judgments, they being distinct, do not lend support to the submissions advanced on behalf of the respondents.

39. Hon'ble The Supreme Court in **Hasmukhlal D. Vora vs. State of T.N.**, 2022 SCC OnLine SC 1732, has observed and held that, "It must be noted that the High Court while passing the impugned judgment, has failed to take into consideration to the facts and circumstances of the case. While it is true that the quashing of a criminal complaint must be done only in the rarest of rare cases, it is still the duty of the High Court to look into each and every case with great detail to prevent miscarriage of justice. The law is a sacrosanct entity that exists to serve the ends of justice, and the courts, as protectors of the law and servants of the law, must always ensure that frivolous cases do not pervert the sacrosanct nature of the law."

40. It is a settled canon of law that the Court has inherent powers to prevent the abuse of its own processes and shall not suffer a litigant utilising the institution of justice for unjust means. It would be proper to deny any relief to a litigant who attempts to pollute the stream of justice by coming to it with his unclean hands. Similarly, a litigant pursuing frivolous and vexatious proceedings cannot claim unlimited right upon court time and public money to achieve his ends.[See **Krishna Lal Chawla vs State of U.P.**, (2021) 5 SCC 435].

41. It was held in **State of Karnataka vs. L. Muniswamy and others**, (1977) 2 SCC 699 by Hon'ble The Supreme Court that, "In the, exercise of this. whole some power, the High Court is entitled to quash a proceeding if it comes to the conclusion that allowing the proceeding to continue would be an abuse of the process of the Court or that the; ends of justice require that the proceeding ought to be quashed. The saving of the High Court's inherent powers, both in civil and criminal matters, is designed to. achieve a salutary public purpose which is that a court proceeding ought not to be permitted to degenerate into weapon of

harassment or persecution. In a criminal case, the veiled object behind a lame prosecution, the very nature of the material on which the structure of the prosecution rests and the like would justify the High Court in quashing the proceeding in the interest of justice. The ends of justice are higher than the ends of mere law though justice has got to be administered according to laws made by the legislature. The compelling necessity for making these observations is that without a proper realisation of the object and purpose of the provision which seeks to save the inherent powers of the High Court to do justice between the State and its subjects, it would be impossible to appreciate the width and contours of that salient jurisdiction.”

42. Hon’ble The Supreme Court in the case of **Bhajan Lal** (supra) enumerated the following principles for exercise of power under Section 482 CrPC:

"102. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and

inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.

(1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

(4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non- cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of

which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge."

43. In **Jugesh Sehgal vs. Shamsher Singh Gogi**, (2009) 14 SCC 683, Hon'ble The Supreme Court observed and held that, "The scope and ambit of powers of the High Court under Section 482 of the Code has been enunciated and reiterated by this Court in a series of decisions and several circumstances under which the High Court can exercise jurisdiction in quashing proceedings have been enumerated. Therefore, it is unnecessary to burden the judgment by making reference to all the decisions on the point. It would suffice to state that though the powers possessed by the High Courts under the said provision are very wide but these should be exercised in appropriate cases, *ex debito justitiae* to do real and substantial justice for the administration of which alone the courts exist."

44. As a sequel to the foregoing discussion and analysis, this Court finds that the impugned orders are liable to be set aside by invocation of the wide and plentitude power under Section 482 CrPC.

45. Consequentially, the present petitions stand allowed and the impugned orders as well as the resultant FIRs alongwith the proceedings arising therefrom are set aside.

46. Pending application, if any, stands disposed of accordingly.

47. Copy of the judgment be placed on the files of the connected cases.

(AMAN CHAUDHARY)
JUDGE

01.06.2023

gsv

Whether reasoned/speaking?

Yes/ No

Whether reportable?

Yes/ No