

**IN THE HIGH COURT AT CALCUTTA
CRIMINAL REVISIONAL JURISDICTION
APPELLATE SIDE
CRR 2822 of 2017**

**With
IA No. CRAN 2 of 2018 (CRAN 1580 of 2018)
With
CRAN 3 of 2020 (CRAN 828 of 2020)
Arun Kumar Jhunjhunwala & Anr.
Vs.
State of West Bengal & Anr.**

For the petitioner :Mr. Sourav Chatterjee, Adv.
Mr. Shibaji Kumar Das, Adv.
Mr. Dipendu Sarkar, Adv.

For the State :Mr. Rana Mukherjee, Adv.
Mr. Imran Ali, Adv.
Ms. Debjani Sahu, Adv.

For the opposite party no.2 :Mr. Debasish Sur, Adv.
Mr. Ashutosh Pathak, Adv.

Heard On : :08.12.2023, 18.01.2024,
28.02.2024, 19.03.2024,
06.05.2024, 09.05.2024,
21.05.2024, 22.05.2024,
11.07.2024, 27.08.2024
29.08.2024

Judgment On : :01.10.2024

Bibhas Ranjan De, J. :

1. The instant revision application has been preferred assailing the proceedings in connection with G.R. No. 2534 of 2008 arising out of DumDum Police Station Case no. 184 of 2008 dated 06.08.2008 which, in turn, culminated to charge sheet no. 51 of 2010 dated 31.03.2010 under Sections 420/465/467/468/469/471 of the Indian Penal Code (for short IPC) presently pending before the Court of Ld. Judicial Magistrate, 2nd Court, Barrackpore, North 24 Parganas.

Brief facts:-

2. The impugned proceeding was put into motion by the opposite party no. 2 herein on 01.08.2008 by filing of a complaint under Section 156(3) of the Code of Criminal Procedure (for short CrPC) in the Court of Ld. Additional Chief Judicial Magistrate, Barrackpore which, in turn, was forwarded to DumDum Police Station, giving rise to DumDum Police Station Case no. 184 of 2008 under Sections 420/465/467/468/469/471 of the IPC.
3. The gist of the allegations leveled in the complaint under Section 156(3) of the CrPC is to the effect that the opposite party no. 2 was the partner of M/s. Annapurna Processing

and Finishing Factory along with the petitioner no. 1. On 19.06.2008 opposite party no. 2 allegedly received a letter from Ld. Advocate Mr. Anil Kumar Roy along with two Xerox copies of annexed documents wherefrom he came to know that he has retired from the partnership of the said factory and the petitioner no. 2 herein entered into the partnership firm in his place. It is further alleged that the opposite party no. 2 herein received another document wherefrom it was found that he himself prayed for retirement. All these documents had his signature attached which are allegedly absolutely forged which he duly communicated to the Ld. Advocate from whom he received those documents. Afterwards, the opposite party no. 2 herein went and inspected those documents and found that the documents and the signatures thereon are absolutely forged. Moreover, the opposite party no. 2 herein also came to know that the petitioners herein allegedly made an agreement with the client of the Ld. Advocate with a view to sale the property situated at 134/1 P.K. Guha Road, PS- DumDum without his knowledge and consent. It was further revealed that at the time of agreement for sale of the said land, the petitioners had shown those two documents to the Mazumdar

Group of Real Estate Private Limited. Therefore, the petitioners dishonestly made the two documents with the forged signature of the opposite party no. 2 herein with a view to cheat him from the property and sell the said property. Thereby, the petitioners committed the offences alleged.

Arguments Advanced:-

4. Ld. Counsel, Mr. Sourav Chatterjee, appearing on behalf of the petitioner has mainly canvassed his argument on the point of non-compliance of provision of Section 154(1) and 154(3) of Cr.P.C. at the time of submitting application under Section 156(3) of Cr.P.C. before the Court of Ld. A.C.J.M, Barrackpore in violation of the principle laid down by the Hon'ble Apex Court in the case of ***Mrs. Priyanka Srivastava and Anr. Vr. State of UP and Anr.*** reported in ***2015 SCC On Line SC 272.***

5. Alternatively, Mr. Chatterjee by relying on the handwriting expert's report, has vociferously argued that no case of cheating is made out as the opposite party no. 2 herein has not suffered from any wrongful loss. Before parting with, Mr. Chatterjee has submitted that the impugned proceeding was

instituted with a mala fide motive which makes the impugned proceeding a fit case for quashing.

6. In support of his contention, Mr. Chatterjee has relied on the following cases:-

- ***Priyanka Srivastava and another vs. State of Uttar Pradesh and others*** reported in **(2015) 6 Supreme Court Cases 287**
- ***Babu Venkatesh and others vs. State of Karnataka and another*** reported in **(2022) 5 Supreme Court Cases 639**
- ***Jai Kumar Goyal and others vs. State of West Bengal and another*** reported in **2023 SCC OnLine Cal 3728**
- ***Mita Chowdhury and another vs. State of West Bengal and another*** reported in **2023 SCC OnLine Cal 2800**
- ***State of Haryana and others vs. Bhajanlal and others*** reported in **1992 Supp (1) Supreme Court Cases 335**
- ***S.L. Chopra and others vs. State of Haryana and others*** reported in **1992 Supp (1) Supreme Court Cases 391**
- ***Vijay and another vs. State of Maharashtra and another*** reported in **(2017) 13 Supreme Court Cases 317**
- ***Prabhu Chawla vs. State of Rajasthan and another*** reported in **(2016) 16 Supreme Court Cases 30**

- ***Dhariwal Tobacco Products Limited and others vs. State of Maharashtra and another*** reported in ***(2009) 2 Supreme Court Cases 370***
- ***Dilawar Singh vs. State of Delhi*** reported in ***(2007) 12 Supreme Court 641***

7. In opposition to that, Ld. Counsel, Mr. Debasish Sur, appearing on behalf of the opposite party no. 2 by refuting the plea of Mr. Chatterjee regarding non-compliance of mandatory provision of Section 154 (1) & (3) of the CrPC has argued that the guideline laid down in the case of ***Priyanka Shrivastava*** (supra) is not applicable to the present case. In support of his contention, Mr. Sur referred to the specific date of events which preceded the judgment of the Hon'ble Apex Court in that case.

8. Ld. Counsel, Mr. Rana Mukherjee, appearing on behalf of the State has drawn my attention to the evidence collected during investigation and has contended that there is enough incriminating material to proceed with the trial against the petitioners.

Findings of the Court:-

9. The main controversy pertaining to this revision application is whether the documents containing the signature of the opposite party no. 2 which showcased his intention of retiring from his position as partner in the said firm and replace the petitioner no. 2 herein in the said firm is forged or not.
10. After careful scrutiny of the allegations made in the complaint under Section 156(3) of the CrPC, it has come to the attention of this Court that the dispute relating to forgery in signature of the opposite party no. 2 herein is a mixed question of law and fact which can only be adjudicated during trial after duly taking into account all the evidence. In that context, I am unable to subscribe to the view of the Mr. Chatterjee that the written complaint itself does not disclose prima facie cognizable offence against the petitioners.
11. But, with regard to non-compliance of mandatory provision of Section 154(1) & (3) of CrPC as enumerated in the case **Priyanka Srivastava** (supra), admittedly there is sheer non-compliance on the part of the opposite party no. 2 herein.
12. The Hon'ble Apex Court dealt with aforementioned non-compliance in the case of **Priyanka Srivastava** (Supra)

wherein an exhaustive guideline was formulated in the following paragraphs:

*“ **30.** In our considered opinion, a stage has come in this country where Section 156(3) CrPC 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 [(2014) 2 SCC 1 : (2014) 1 SCC (Cri) 524]* are being filed. That apart, the learned Magistrate would also be aware of the delay in lodging of the FIR.

32. The present lis can be perceived from another angle. We are slightly surprised that the

financial institution has been compelled to settle the dispute and we are also disposed to think that it has so happened because the complaint cases were filed. Such a situation should not happen.

33. *At this juncture, we may fruitfully refer to Section 32 of the SARFAESI Act, which reads as follows:*

“32. Protection of action taken in good faith.—No suit, prosecution or other legal proceedings shall lie against any secured creditor or any of his officers or manager exercising any of the rights of the secured creditor or borrower for anything done or omitted to be done in good faith under this Act.”

In the present case, we are obligated to say that the learned Magistrate should have kept himself alive to the aforesaid provision before venturing into directing registration of the FIR under Section 156(3) CrPC. It is because Parliament in its wisdom has made such a provision to protect the secured creditors or any of its officers, and needless to emphasise, the legislative mandate has to be kept in mind.

34. *In view of the aforesaid analysis, we allow the appeal, set aside the order passed [Priyanka Srivastava v. State of U.P., Criminal Misc. WP No. 24561 of 2011, decided on 23-12-2011 (All)]*

by the High Court and quash the registration of the FIR in case Crime No. 298 of 2011, registered with Police Station Bhelupur, District Varanasi, U.P.

35. *A copy of the order passed by us be sent to the learned Chief Justices of all the High Courts by the Registry of this Court so that the High Courts would circulate the same amongst the learned Sessions Judges who, in turn, shall circulate it among the learned Magistrates so that they can remain more vigilant and diligent while exercising the power under Section 156(3) CrPC.”*

- 13.** Hon’ble Apex Court subsequently came across the same issue of non-compliance in a case of ***Babu Venkatesh & Ors. Vs. State of Karnataka & Anr.*** reported in **2022 SCC OnLine SC 200** wherein the following observations were made:

“23. After analysing the law as to how the power under Section 156(3)CrPC has to be exercised, this Court in Priyanka Srivastava v. State of U.P. [Priyanka Srivastava v. State of U.P., (2015) 6 SCC 287 : (2015) 3 SCC (Civ) 294 : (2015) 4 SCC (Cri) 153] has observed thus : (SCC p. 306, paras 30-31)

“30. In our considered opinion, a stage has come in this country where Section 156(3)CrPC 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 [Lalita Kumari v. Govt. of U.P., (2014) 2 SCC 1 : (2014) 1 SCC (Cri) 524] are being filed. That apart, the learned Magistrate would also be aware of the delay in lodging of the FIR.”

24. *This Court has clearly held that, a stage has come where applications under Section 156(3)CrPC are to be supported by an affidavit duly sworn by the complainant who seeks the invocation of the jurisdiction of the Magistrate.*

25. *This Court further held that, in an appropriate case, the learned Magistrate would be well advised to verify the truth and also verify the veracity of the allegations. The Court has noted that, applications under Section 156(3)CrPC are filed in a routine manner without taking any responsibility only to harass certain persons.*

26. *This Court has further held that, prior to the filing of a petition under Section 156(3)CrPC, there have to be applications under Sections 154(1) and 154(3)CrPC. This Court emphasises the necessity to file an affidavit so that the persons making the application should be conscious and not make false affidavit. With such a requirement, the persons would be deterred from causally invoking authority of the Magistrate, under Section 156(3)CrPC. Inasmuch as if the affidavit is found*

to be false, the person would be liable for prosecution in accordance with law.

27. *In the present case, we find that the learned Magistrate while passing the order under Section 156(3)CrPC, has totally failed to consider the law laid down by this Court.*

28. *From the perusal of the complaint it can be seen that, the complainant Respondent 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)CrPC. The High Court has also failed to take into consideration the legal position as has been enunciated by this Court in Priyanka Srivastava v. State of U.P. [Priyanka Srivastava v. State of U.P., (2015) 6 SCC 287 : (2015) 3 SCC (Civ) 294 : (2015) 4 SCC (Cri) 153] , and has dismissed the petitions by merely observing that serious allegations are made in the complaint.*

29. *We are, therefore, of the considered view that, continuation of the present proceedings would amount to nothing but an abuse of process of law.*

30. *We therefore, allow these appeals and set aside the judgments and orders of the High Court dated 22-1-2021, passed in Babu Venkatesh v. State of Karnataka [Babu Venkatesh v. State of Karnataka, 2021 SCC OnLine Kar 4656] · [Babu Venkatesh v. State of Karnataka, 2021 SCC OnLine Kar 15067] · [Babu Venkatesh v. State of Karnataka, 2021 SCC OnLine Kar 15068] · [Babu Venkatesh v. State of Karnataka, 2021 SCC OnLine Kar 15069] . Consequently, FIRs Nos. 255, 256 of 2019 filed on 16-12-2019, FIR No. 257 of 2019*

filed on 17-12-2019 and FIR No. 258 of 2019 filed on 18-12-2019 registered with Jayanagar Police Station, Bengaluru City are quashed and set aside. Pending application(s), if any, shall stand disposed of.”

14. Coming to the case at hand, the application under Section 156(3) of Cr.P.C. was neither supported by any specific affidavit regarding compliance of Section 154(1) and 154(3) of Cr.P.C. nor supported by the necessary documents to that effect and to add to that there is nothing mentioned about the aforesaid compliance in the body of the complaint which is mandatorily required under Section 156(3) of the Cr.P.C. also.
15. In that context, I am unable to concur with the view of Mr. Sur that the principles laid down in the case of **Priyanka Srivastava** (Supra) are not applicable in this case as the petition under Section 156(3) of the CrPC preferred by the opposite party no. 2 herein was made way before the decision of the Hon’ble Apex Court in the above case.
16. The specific provision of Section 154(1) & (3) of the CrPC were codified by the legislature with the specific intention to afford an opportunity to the parties to avail the benefit of the provision of Section 156(3) of CrPC subject to compliance of

Section 154(1) & (3) of the CrPC. All these codifications were made way before the institution of the petition under Section 156(3) of the CrPC in connection with the case at hand. The Hon'ble Apex Court only reminded us to comply with those mandatory provisions and further crystallized the process of compliance.

17. Therefore, Mr. Sur's claim that no retrospective effect can be given to the guidelines of the **Priyanka Srivastava** (supra) case, in my opinion, does not even arise.
18. On this score, the proceeding impugned in this revision application is liable to be quashed for non-compliance of guidelines envisaged in **Priyanka Srivastava** (Supra).
19. In the light of the aforesaid discussion, the instant revision application being no. CRR 2822 of 2017, Stands allowed.
20. Interim order, if there be any, stands vacated.
21. Connected applications, if there be any, stand disposed of accordingly.
22. Case Diary be returned at once.

- 23.** All parties to this revision application shall act on the server copy of this order downloaded from the official website of this Court.
- 24.** Urgent Photostat certified copy of this order, if applied for, be supplied to the parties upon compliance with all requisite formalities.

[BIBHAS RANJAN DE, J.]