

**IN THE HIGH COURT AT CALCUTTA
CRIMINAL REVISIONAL JURISDICTION
APPELLATE SIDE**

**CRR 3319 of 2017
Anupama Katkar & Anr.
Versus
State of West Bengal & Ors.
With
CRR 2578 of 2018
Kailash Sahebrao Katkar & Ors.
Vs.
State of West Bengal and Anr.**

For the Petitioners : Mr. Milon Mukherjee, Sr. Adv.
 Mr. Raj Kamal
 Mr. Suman Ganguly

For the State : Mr. Madhusudan Sur, Ld. A.P.P.
 Mr. Manoranjan Mahata

Heard On : 28.06.2023,14.08.2023,31.08.2023,
 03.10.2023,19.12.2023,17.01.2024,
 26.02.2024,18.03.2024,01.05.2024,
 12.06.2024

Judgment On : 25.06.2024

Bibhas Ranjan De, J.

1. At the very outset, it would be pertinent to mention that both the preferred revision applications having same and identical facts and circumstances and originating out of the self-same cause of action shall be disposed of via this common judgment.
2. Both the revision applications were put into motion via one written complaint made by the opposite party no. 2, namely, Manohar Malani under Section 156 (3) of the Code of Criminal Procedure (for short Cr.P.C.) with the Ld. Additional Chief Judicial Magistrate (for short A.C.J.M.), Serampore who in turn forwarded the same to Uttarpara Police Station for investigation which gave rise to Uttarpara Police Station Case No. 284/2016 dated 23.05.2016 under Sections 204/406/409/420/466/467/468/469/471/474/34 of the Indian Penal Code (for short IPC).

Brief introduction of the parties alongwith backdrop:

3. With respect to CRR 3319 both the petitioners are the wives of the petitioners in connection with CRR 2578/18 /directors of Quick Heal Technologies Ltd./ Company.
4. With respect to CRR 2578/18 petitioners no. 1 and 2 are directors of the company, petitioner no. 3 is the company itself, petitioner no. 4 is a practicing chartered accountant and petitioner no. 5 is the company secretary.

- 5.** In both the revisional applications the common opposite party no, 2 is the de facto complainant who lodged a written complaint under Section 156(3) of Cr.P.C. alleging inter alia that the complainant/opposite party no. 2 since 1994 was in acquaintance with the petitioner no. 1 & 2 of CRR 2578/18. The common opposite party no. 2 in connection with both the revisional applications was running a company under the name and style of National Computer Systems (for short NCS) which was engaged by the petitioners no. 1 & 2 of CRR 2578/18 to promote and market the products made by them.
- 6.** It is further alleged that in the year 1999 when the economic condition of the petitioner no. 3/company worsened, petitioners no. 1 & 2 of CRR 2578/18 along with others approached the common opposite party no. 2 with the proposal of investing in the equity of the said company. Relying on the assurances and trusting the integrity of the said company the complainant/opposite party no. 2 herein along with his family members made investment in the said company totaling to an amount of Rs. 2,00,000/- in the year 2000 during August-September. In lieu of the investment made by the opposite party no. 2 the said company allotted certain shares in the equity share capital of the company at the rate of Rs. 10/- each. And also appointed the opposite party no. 2 as the director of the said company. But, around December, 2002 due to differences of opinion between opposite party no. 2 and petitioners no. 1 & 2 of CRR 2578/18, the

complainant/opposite party no. 2 resigned from the Board of Directors. Albeit the complainant and his family members remained share-holders of the successor of interest of the said company.

7. But, on February, 2016 the said company/petitioner no. 3 of CRR 2578/18 published a Red Herring Prospectus (for short RHP) expressing their intention to offer the shares of the said company to the public. On careful perusal of the RHP the opposite party no. 2 found that his name along with the names of his other family members did not feature in the list of the existing share-holders of the company. Upon receipt of the information when the opposite party no. 2 contacted the company, no fruitful clarification was given. As a result, the complainant after going through several forums obtained certified copies of the balance sheet for the year 2001-2002, 2002-2003, 2003-2004 of the company and on inspection of the same it was revealed that the name of the opposite party no. 2 and his other family members were reflected in the list of share-holders filed along with the annual return for the year 2001. It was further alleged that the accused converted the shares belonging to the opposite party no. 2 and his family members and forged the documents from 2003 onwards which they have submitted to the Registrar Of Companies (for short ROC) Pune, Maharashtra. Thus, the petitioners in connection with both the revisional applications have committed certain offences alleged above.

8. Upon completion of investigation the police submitted charge-sheet dated 31.03.2017 against the petitioners in connection with both the revisional applications and Ld. ACJM Serampore vide order dated 15.07.2017 took cognizance of the same.

Arguments advanced:

9. Mr. Milon Mukherjee, Ld. Senior Advocate, appearing on behalf of the petitioners in connection with both the revisional applications advanced his argument mainly on the following points:

- The impugned FIR and charge-sheet reflects a gross abuse of the process of law as a dispute which is purely civil in nature has been accorded a cloak of criminality by lodging of the impugned FIR.
- The impugned proceedings have been initiated at the behest of the opposite party no. 2 as a counter blast to the several criminal proceedings pending against the opposite party no. 2 in several courts in Pune.
- The amount alleged to be paid by the opposite party no. 2 and his family members to the Quick Heal Company to the tune of Rs. 2,10,000/- was given only as an unsecured loan and those shares were issued to the opposite party no. 2. In addition to that, Mr. Mukherjee has stated that the petitioners have already refunded the total loan amount of Rs. 2,10,000/- which is further

substantiated by the audit report in form 3CA & 3D under Income Tax Act.

- Learned counsel has also added that the opposite party no. 2 did not furnish any details about the share certificate number, share distinctive number, folio numbers in the complaint.
- Before parting with, Mr. Mukherjee has further advanced 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, Serampore 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.**

10. None appears on behalf of the opposite party no. 2.

11. Ld. Counsel, Mr. Madhusudan Sur appearing on behalf of the State in both the revisional applications has relied on the evidence collected during investigation but conceded the argument advanced on the point of non-compliance of guidelines laid down by the Hon'ble Apex Court in **Priyanka Srivastava** (Supra).

Analysis:

12. Mr. Mukherjee in support of his argument relied on voluminous documents annexed with the revision application and also tried to make this court understand that no

cognizable offence had been disclosed in the written complaint in view of the documents relied on behalf of the petitioners i.e. defence.

13. By relying on the principle laid down by the Hon'ble Apex Court in the case of **Ravindra Kumar Madhanlal Goenka & Ors. vs. M/s. Rugmini Ram Raghav Spinners P. Ltd.** reported in **2009 AIR SCW 3211**, the issues raised by Mr. Mukherjee cannot be decided at this nascent stage of the proceedings without admitting the documents in evidence during trial. However, this court is unable to ignore the argument advanced on the issue of non-compliance of Section 154(1) and 154(3) of Cr.P.C.

14. Hon'ble Apex Court dealt with aforementioned non-compliance in a 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.

- 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.”

- 15.** 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 it was observed as follows:

“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.”

- 16.** In our case 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.
- 17.** On this score, both the revision applications are liable to be quashed for non-compliance of guidelines enumerated in **Priyanka Srivastava** (Supra).
- 18.** Accordingly, both the revision applications are hereby allowed. As a sequel, the impugned proceeding being Uttarpara Police Station Case No. 284/2016 corresponding to G.R. Case No. 119/2016 presently pending before the Court of Ld. A.C.J.M., Serampore is hereby quashed.
- 19.** All connected applications, if there be any, stand disposed of accordingly.
- 20.** Case diary be returned.
- 21.** All parties to this revisional application shall act on the server copy of this order downloaded from the official website of this Court.

- 22.** 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.]