

Himmat Anandrao Jadhav and ors .. Applicants

Versus

The State of Maharashtra and anr .. Respondents

CRIMINAL WRIT PETITION NO. 2299 OF 2016

Prakash Anandrao Jadhav .. Petitioners

Versus

The State of Maharashtra and anr .. Respondents

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Mr. Subodh Desai with Saurabh Butala, Harshad Sathe, Siddhesh Bane, Manvi Sharma and Shubham Gangan for the applicant/peetitioners.
Mr.Sanjeev Kadam i/b Kalpesh Patil for respondent no.2.
Mr.S.V. Gayand, APP for the State.

**CORAM: BHARATI DANGRE &
MANJUSHA DESHPANDE, JJ.
DATED : 1st AUGUST, 2024**

JUDGMENT:- (Per BHARATI DANGRE,J)

1 The two proceedings in form of Criminal Application
No. 753/2016 and Writ Petition No. 2299/2016 seek a common

relief of quashing and setting aside the FIR No. 48/2016 registered with Waduj Police Station, which has invoked the offence punishable under Section 191, 193, 420 r/w Section 34 of the IPC against all the accused persons, and also the charge-sheet being filed pursuant to completion of investigation, on the ground that no offence is made out and the FIR and the charge-sheet is hit by provisions of Section 195 and Section 340 of Code of Criminal Procedure (for short 'Cr.P.C').

2 The brief background in which the reliefs are sought is necessary to be highlighted.

Sou Manisha Prakash Jadhav, the respondent no.2, the wife of Prakash Anandrao Jadhav, the petitioner in WP No. 2299/2016 on 27/10/2014, approached the Judicial Magistrate First Class (JMFC) Waduj, by filing a complaint, where she prayed for investigation into her complaint through Waduj police station.

The prayer was made in the background that she had lodged the proceedings under the Domestic Violence Act before the Magistrate, vide Miscellaneous Application (M.A) No. 194/2012 by alleging that her husband Prakash was managing their ancestral company 'Tushar Foundry'.

The applicant informed the Magistrate that she had also registered an FIR against her husband and members of his family members for Domestic Violence in Chinchwad police

station vide C.R.No. 171/2012, and the case was pending in the Waduj Court. She also informed that in the Miscellaneous Application, an order was passed directing that the applicant should pay her interim maintenance of Rs.10,000/- and the final hearing on the said application was in progress in Waduj Court.

3 In the complaint Manisha alleged that in order to avoid the liability of maintenance, her husband, in connivance with her brother-in-law. Advocate Himmat Anandrao Jadhav, in order to mislead the Court, procured a fraudulent and false certificate that he was in employment of Alpha Engineers and Fabricators, situated on Plot No. 150/3, MIDC, Landewadi, Bhosri, Pune.

This document was prepared in connivance with the owner of the said Company, despite the fact that her husband was in fact attending Tushar Foundry everyday and the applicant and her family members has video recorded his visit and attendance in Tushar Foundry.

4 The complainant, therefore, alleged that in order to avoid the liability of maintenance, a fraudulent certificate was prepared and produced in the Court at Waduj and therefore, she had approached the Police Inspector, Waduj police station, by filing a complaint on 10/10/2024.

Despite such an application being made, since the Police Inspector did not take any action, despite a cognizable

offence being made out and since no investigation was conducted, she alleged that the act was contrary to the directions of the Apex Court in case of *Lalita Kumari Vs. Government of Uttar Pradesh*,¹ and this constrained her to approach the Magistrate, with a request to direct her complaint to be registered and to be investigated by Waduj police station.

5 On 14/11/2014, JMFC, Waduj, passed the following order:

“Matter to be kept for recording verification of the complainant on the next day i.e. 20/11/2014”.

The above order was a result of the observation by the Magistrate that M.A. No.194/2012 under the Domestic Violence Act, in which it was alleged that false and bogus certificates in respect of the service of her husband Prakash were filed in collusion with others, was pending before the Court and the evidence of the opponent is yet to commence and no cross-examination had taken place.

The Magistrate, therefore, concluded that in the circumstances, it would be just and proper not to give any opinion at this stage, about these certificates filed in the proceedings.

6 The order dated 14/11/2014 was challenged before this Court by the respondent no.2 Manisha, by filing Criminal

¹ (2008) 7 SCC 164

Writ Petition No. 183/2015 and the learned Single Judge of this Court, on 13/1/2016, found substance in the submission advanced, as the trial Court had sent the case for investigation under Section 156(3) of Cr.P.C, on the ground that the evidence was not yet completed.

However, by taking note of the fact that M.A No. 194/2012 is now disposed off on recording of evidence, the conclusion derived was, the trial court can give fresh consideration to the prayer of the petitioner for sending the case of investigation u/s.156(3).

With the aforesaid observation, this Court directed as under :-

“However, facts of the present case disclose that the trial Court has not ordered investigation under Section 156(3) of the Code of Criminal Procedure, as the recording of evidence in M.A.No.194 of 2012, was not complete and it was at premature stage to direct investigation. Now, those circumstances are changed. Recording of evidence is complete and matter is disposed of. In such situation it is a fit case where the trial Court can reconsider the application given by the petitioner and apply its own discretion.

At this stage, it is made clear that this Court is not substituting the order of investigation under Section 156(3) of Code of Criminal Procedure with the order of enquiry under Section 202 of Code of Criminal Procedure as passed by trial Court, but this Court is merely directing the trial Court to reconsider afresh M.A. No.207 of 2014, as filed by the petitioner before it. The trial Court is still at liberty after going through the material placed before it, to pass order of enquiry under Section 202 of Code of Criminal Procedure. This Court is merely directing the trial Court to apply its mind afresh because now situation is changed and the very ground on which trial Court has not ordered investigation under Section 156(3) is no more surviving in view of recording of evidence and matter being disposed of finally.

8. Thus, Writ Petition is allowed. The impugned order passed by the

trial Court is set aside. The trial Court is directed to reconsider afresh the prayer made in M.A. No.207 of 2014. Needless to state that the trial Court to decide the said application without being influenced by any of the observations made above.”

7 On the matter being directed to be decided afresh, the Magistrate, Waduj, on 26/2/2016, passed the following order:-

“4 In the present case, it is material to see that according to the complainant, the opponent in MA. No.194/12, which is filed under Domestic Violence Act have prepared false and bogus certificates in respect of his service by making collusion with others. The said case is pending before this Court and the evidence of the opponent is yet to be commenced i.e. affidavit of witnesses are filed. But, there is no cross-examination has been taken place. Therefore, in such circumstances, I am of the view that it would not be just and proper to give any opinion at this stage about these certificates which are filed in that proceeding.

8 The above order resulted in registration of FIR on 1/3/2016 with Waduj police station vide C.R.No. 0048/2016 against Prakash Jadhav and Himmatrao Anandrao Jadhav invoking Section 420 r/w Section 34 of the IPC.

Pursuant to the registration of the C.R, by an application preferred on 2/3/2016, the other three persons i.e. Vasantrao R. Patil, Namdeo R. Shinde and Ashok Prakash Mulik were added as accused and Sections 191 and 193 of IPC was also added in the subject C.R.

9 In connection with the C.R, Prakash Jadhav was arrested by Waduj police station, but was released on bail.

On completion of investigation, the charge-sheet came to be filed in the Court of JMFC, Waduj, on 30/11/2019

under Sections 420, 468, 193 r/w Section 34 of the IPC against the five accused persons.

10 On permission being granted by this Court, amendment is carried out in the proceedings and the charge-sheet is brought on record, with a prayer to quash and set aside the charge-sheet filed in C.R.No. 48/2016, and praying for stay of the proceedings pending before the JMFC, Waduj vide RCC No. 257/2019.

11 It is in this factual background the two proceedings are filed; Writ Petition No. 2299/2016 is filed by Prakash A. Jadhav, the husband of Manisha Jadhav, respondent no.2, now raising a challenge to the charge-sheet as well as the proceedings pending before the JMFC Waduj, in pursuance to the filing of the charge-sheet. Criminal Application No. 753/2016 is filed by Himmat Anandrao Jadhav, the brother-in-law of the complainant, Vasantrao Raghoji Patil, Namdeo Shinde and Ashok Mulik, seeking an identical relief of quashing and setting aside of the charge-sheet filed in C.R.No. 48/2016 and also praying for stay of the proceedings pending before JMFC, Waduj against the four petitioners.

12 The learned counsel Mr.Subodh Desai, though has many submissions to advance on facts of the case in attempting to demonstrate the malafide approach of the complainant, and as to how the Investigating Officers who are specifically impleaded

as respondents were hand-in-glove with her, one legal issue which he would press into service, is about non-adherence to the directions issued by the Apex Court in case of *Priyanka Srivastava Vs. State of Uttar Pradesh*,² by the Magistrate and in absence of the pre-conditions being satisfied, according to him, the impugned order passed on 26/6/2016, directing registration of the crime and its investigation as per section 156(3) of Cr.P.C is unsustainable.

Since we found merit in the said argument advanced, we have refrained ourselves from examining the factual aspects of the matter.

13 Considering abuse of the provisions contained in form of Section 156(3) of Cr.P.C, seeking direction for registration of FIR, the Apex Court with a view to curb the practice of filing such applications in a routine and rash manner, without any responsibility, but with an intention to harass certain persons, in case of *Priyanka Srivastava*, (supra) formulated specific guidelines.

By specifically referring to the police officers, power to investigate cognizable offences under Section 156, the Court took note of the duty cast on the Magistrate while exercising the power under sub-section (3) and by referring to the precedents and also to the decision of the Constitution Bench in case of *Lalita Kumari Vs. State of U.P* (supra) and has observed thus:-

² 2015 6 SCC 287

“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.”

14 Recording that the power under Section 156(3) warrants application of judicial mind, since the Court of law is involved, Their Lordships of the Apex Court categorically noted that it is not the police taking steps at the stage of Section 154 of the Code and the litigant at his own whims cannot invoke the authority of the Magistrate. The pertinent observations in paragraph no.30 and 31 of the said Law Report deserve a reproduction:-

“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.

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.”

15 Upon delivering the aforesaid verdict, the Apex Court directed that the copy of the order passed, shall be sent to the learned Chief Justices of all High Courts, so that the High Courts could 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).

It is pertinent to note that this decision was delivered by the Apex Court on 19/3/2015 and it was therefore, imperative to adhere to the law laid down by the highest Court of the country, which bind every authority including a judicial authority.

16 Mr.Desai has placed reliance upon the decision of Division Bench of this Court in case of *Pradeep Ramchandra Velip Vs. State of Goa*³, wherein the law laid in *Priyanka Srivastav*, was made applicable after it was declared in the following words:-

“14 In the present case, we find that the third respondent did not file any affidavit in support of the complainant. Though the complaint was filed prior to the passing of the judgment by the Supreme Court in the case of *Priyanka Srivastava* (supra), but the revision was decided after the judgment of the Supreme Court and, as such, the Revisional Court ought to have taken note of the judgment of the Supreme Court in the case of *Priyanka Srivastava* (supra). In the result, there is violation of the law laid down by the Supreme Court in *Priyanka Srivastava* (supra), and for this reason also the impugned orders are liable to be quashed.

15 So far as the reason assigned by both the Courts below that since the law laid down by the Supreme Court in case of *Anil Kumar* (supra) is in the matter of Prevention of Corruption Act, as also in Section 197(1) of the Cr.P.C, so far as they relate to the sanction being identical, the ratio of the said judgment applies with full force to the present matter and, as such, the law laid down by the Supreme Court in the case of *Anil Kumar* (supra) was required to have been followed.”

17 In *Kamal J. Seth Vs. State of Maharashtra & Anr*,⁴ the question fell for consideration whether the directions issued in *Priyanka Srivastava*, will be prospective in its operation and the Division Bench specifically observed thus:-

“22 The subject complaint was also not supported by duly sworn affidavit of the Complainant. As held in the case of *Priyanka Srivastava* (supra), this is one of the requirements in respect of the complaint/application seeking to refer such complaint / application to the concerned police station under Section 156 (3) of Cr.P.C. for registration of a crime, its investigation and submission of necessary report. The decision in the case of *Priyanka Srivastava* (supra) is followed in the case of *Babu Venkatesh and Ors.* (supra).

3 2018 SCC Online Bom 18

4 2024 SCC Online Bom 641

23 No doubt, in the case in hand, the complaint was filed prior to the date of the decision of the Hon'ble Supreme Court in the case of *Priyanka Srivastava* (supra). However, it cannot be ignored that the said decision is a law laid down by the Apex Court of the land, hence and for the V.A. Tikam WP 3240 of 2014.doc reason of non-compliance with Section 154(1)(3) of Cr.P.C. as noted above, said decision is applicable here

24 In this regard a useful reference can be made to the decision of Karanataka High Court in the case of Smt. Saritha Sekhar (supra) wherein (para 14), it is held that, "... , the Hon'ble Supreme Court has not stated in the Judgment delivered on 19.03.2015 in the case of *Priyanka Srivastava* (supra) that the Judgment will have only prospective effect. Therefore, when there is nothing stated by the Hon'ble Supreme Court, it is always have a retrospective effect". The Karanataka High Court has followed the decision in the case of *Anil K. Joshi Vs. State of Uttarakhand & Anr.*, in Cril. Misc. Appln. No.1613 of 2015, dated 10th April 2019, wherein in para 5 it is held that, "A law made by the Court always has a retrospective effect unless specifically stated in the ruling itself. Since it has not been stated that the ruling will have a prospective effect, the decision of the Hon'ble Apex Court in the case of *Priyanka Srivastava and Anr. Vs. State of Uttar Pradesh and Ors.* (supra) will have a retrospective effect and this was absolutely elementary and this Court fails to understand as to how the Court below missed this simple concept". The decision in Smt.Saritha Sekhar (supra) was appealed before the Hon'ble Supreme Court in the case of Shilpa Kishore (supra). However, said Appeal was permitted to be withdrawn on 31 st July 2023 to avail such other remedy as may be available under law.

25 Conspectus of the above discussion is that, the impugned order dated 28th February 2014, passed in Criminal Complaint No. 26(A)/Misac/2013 by the Metropolitan Magistrate, 8th Court, at Esplanade, Mumbai and the consequent MECR No.1/2014 registered with Azad Maidan police station, both are liable to be quashed and accordingly, are quashed and set aside.

18 According to Mr.Desai, in absence of the law laid down in *Priyanka Srivastava*, the full Bench of the Bombay High Court in case of *Panchabhai Popotbhai Butani Vs. State of Maharashtra & ors.*⁵ had crystallised the position of law, touching Section 156(3) and Section 200 of the Code of Criminal Procedure.

19 In the background facts of the present case, it is evident that the first order was passed by the Magistrate on

5 2009 SCC Online Bom 1983

14/11/2014, when the matter was directed to be kept for recording of verification, since the Miscellaneous Application in which the document was filed, was alleged to be pending.

When this order was challenged before the High Court, the Miscellaneous Application was already disposed off and therefore, the Court directed that the trial Court shall freshly consider the prayer of the petitioner for sending the case for cancellation u/s. 156(3) of Cr.P.C in the wake of the changed circumstances.

The High Court specifically recorded thus :-

“In such a situation, it is a fit case where the trial Court can re-consider the application given by the petitioner and apply its own discretion.”

In the operative portion of the order, in paragraph no.8, the trial Court was directed to reconsider afresh the prayer made in Miscellaneous Application No. 207/2014.

20 The High Court, thus by order dated 13/1/2016 conferred discretion in the Magistrate to consider the matter afresh, and when it came before the Magistrate for reconsideration, it was imperative for him to follow the law laid down in *Priyanka Srivastava* on 19/3/2015.

The impugned order dated 26/2/2016 has not adhered to the procedure prescribed and an attempt of Mr.Kadam representing the complainant, in submitting that prior to filing of

the complaint, the respondent complainant had approached the police station at Waduj, on 10/10/2024, has failed to impress us and even Mr.Kadam is unable to satisfy us about such complaint being preferred. In any case, after the decision in case of *Priyanka Srivastava*, it was necessary for the complainant to file an affidavit, assuring the compliance of Section 154(1) and Section 154(3) before filing a petition under Section 156(3).

Sub-section (1) of Section 154 make it imperative to reduce in writing every information relating to commission of a cognizable offence given to an officer-in-charge of a police station and the substance thereof, to be entered in a book kept by such Officer in such form, as the State Government may prescribe. Sub-section (3) of Section 154 is a remedy available to a person who is aggrieved by a refusal on part of the Officer-in-charge of a police station to record the information referred to in sub-section (1) to send the substance of such information, in writing and by post to the Superintendent of Police concerned, who if satisfied that such information disclose commission of cognizable offence, then he shall either investigate the case himself or direct the investigation to be made by any police officer sub-ordinate to him in the manner provided by the Court.

21 The Full Bench of Bombay High Court, earlier to *Priyanka Srivastava*, had already clarified this trinity in the following effect:-

“46 To us it appears to be essential that normally a person should invoke the provisions of [Section 154](#) of the Code before he can take recourse to the powers of the Magistrate under [Section 156\(3\)](#). The provisions of [Section 156\(3\)](#) are consequential upon a default of a police officer failing to comply with the requirements of [Section 154](#) to the prejudice of the aggrieved person or the complainant, as the case may be. Once the police officer fulfills his duty/ obligation and completes investigation in accordance with law, leading to the filing of the report under [Section 173](#), the provisions of [Section 156\(3\)](#) would stand exhausted and can hardly be taken recourse to. Despite this, we find it difficult to lay down any strait-jacket formula in this regard. It may not be very advisable to state it as an absolute proposition of law without any exception. There can be cases where the time lag involved in the commission of the crime, intimation to the police and its inaction in terms of [Section 154](#), make it difficult for a complainant or an aggrieved person including a victim to first take recourse to the provisions of [Section 154\(3\)](#) and then invoke the jurisdiction of the Court under [Section 156\(3\)](#). Such cases could be the ones where there is likelihood of the evidence being destroyed and the delay in investigation may prove fatal to the case of the prosecution or the complainant. In such exceptional circumstances, it cannot be said that any person who has approached the police under [Section 154](#) for registration of information of commission of an cognizable offence and the police instantly fails to act, is debarred from approaching the Court directly under [Section 156\(3\)](#). As a normal proposition of law, invocation of the provisions of [Section 154](#) in its entirety should be treated as a condition precedent to invocation of the powers of the Court under [Section 156\(3\)](#), but there can be exceptions where the facts and circumstances of the case justify directly approaching the Court by the complainant. If a person is desirous of invoking the judicial process at the very first instance, he can always take recourse to [Section 200](#) as contained in Chapter XV of the Code, but if he wishes to invoke the powers of the Court under [Section 156\(3\)](#), normally, he may exhaust the remedy available to him as is provided by the Legislature in terms of [Section 154](#) of the Code.

22 In light of the non-adherence to the law laid down by Full Bench of this Court in case of *Panchabhai Popotbhai Butani* (supra) as well the law laid down by the Apex Court in *Priyanka Srivastava*, which was in force, the impugned order passed by the Magistrate on 26/2/2016 cannot be sustained and hence liable to be quashed and set aside.

Resultant thereto, registration of the FIR in C.R.No. 0048/2016 against the accused persons and invocation of the offences against them cannot be sustained and therefore, it is also quashed and set aside.

Despite the charge-sheet having been filed, since we find that the subject FIR which was registered itself was non-compliant with the law laid down by the Apex Court, and since we are of the clear opinion that continuation of the proceedings against the accused persons who are before us in the Writ Petition and Criminal Application, would amount to abuse of process of law, by invoking the power conferred u/s.482 of the Code, the same is quashed and set aside.

Criminal Application and Writ Petition are allowed in the aforesaid terms.

(MANJUSHA DESHPANDE,J)

(BHARATI DANGRE, J.)