

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
WRIT PETITION NO. 4615 Of 2015

Suhil Khalif Khan and ors .. Petitioners
Versus
The Sr. Inspector of Police and anr .. Respondents

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Mr. M.A. Choudhari with Ms.Trisha Choudhari and Ranveer Choudhari for the petitioner.
Ms. S.S. Kaushik, APP for the State.
PSI Patil Valsange present.

CORAM: BHARATI DANGRE &
MANJUSHA DESHPANDE,JJ.
DATED : 24th JUNE, 2024

P.C:-

1 We have heard the counsel for the respondent/ complainant in continuation of the order passed by us on an earlier date.

When the impugned order passed by the Judicial Magistrate, First Class, Akkalkot dated 9/9/2015 is perused, as we have already observed that it is perfunctory in nature as we find no reasons justifying exercise of power under Section 156(3) of

Code of Criminal Procedure, the Magistrate has merely recorded as under:-

“1 *The Police Inspector of Valsang police station is directed to investigate the offence under Section 156(3) of the Code of Criminal Procedure, 1973.*

2 *The original complaint be sent to the Valsang police station for registering the crime against the accused.*

3 *The complaint would be treated as FIR.”*

2 In *Priyanka Srivastava Vs. State of Uttar Pradesh and ors, 2015 (6) SCC 287*, the Hon’ble Apex Court on 19/3/2015 has laid down specific guidelines, on taking note of the arbitrary exercise of power by the Magistrates and by noting that a stage has come in the country where 156(3) applications are to be supported by an affidavit duly sworn by the applicant who seek invocation of the jurisdiction of the Magistrate, and it was also expected that in appropriate cases, the learned Magistrate would be well advised to verify the truth and also can verify the veracity of the allegations.

The whole intention in introducing the procedure of filing an affidavit was to make the complainant or the applicant more responsible, as such applications are filed in routine manner without taking any responsibility whatsoever only to harass certain persons.

What was specifically observed by Their Lordships of the Apex Court must be taken note of, and we deem it appropriate to reproduce the same.

“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 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.”

3 Admittedly, the order passed by the Magistrate on 9/9/2015 clearly lies in the teeth of the decision delivered by the Apex Court in case of Priyanka Srivastava.

In any case, when we have perused the impugned order, where the Magistrate has exercised its jurisdiction u/s.156(3) of Cr.P.C, it is evident that it is without application of mind as the Magistrate has merely referred to some record and in one line, he record that he find substance in the allegations and therefore, for the purpose of recovery, investigation by police is necessary to be exercised.

Since the procedure adopted by the Magistrate is *sans* the one prescribed in Priyanka Srivastav, the impugned order cannot be sustained.

For the aforesaid reasons, the same is quashed and set aside.

Petition stands allowed in terms of prayer clause (b)
which reads as under:-

“(b) After examining the validity and legality of the impugned FIR No. 243/2015 dated 22.09.2015 registered for the offence punishable u/s.382, 397 by respondent no.1 police station i.e. Exhibit ‘A’ to this petition kindly be quashed and set aside.”

(MANJUSHA DESHPANDE, J)

(BHARATI DANGRE, J.)