

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
WRIT PETITION NO. 3240 OF 2014.**

Kamal J. Sheth)
Aged 45 years, Occupation Business,)
having his address at 49/2, Swastik Plaza,)
V.L. Mehta Marg, Juhu, Vile Parle (W),)
Mumbai – 400 049)...Petitioner

Versus

1. State of Maharashtra)
2. Mr. Rajan Sujnani)
Through Constituted Attorney)
Mr. Kishore Daulatram Vatnani)
Having address at 502, Sealine)
16 Union Park, Khar (West),)
Mumbai – 400 052)...Respondents

Mr. Anil G. Lalla a/w. Ms. Sandhya Tiwari, Hafeesul Rahman i/b. Abdul K. Millwala for Petitioner.

Mrs. A.A. Takalkar, APP for the State.

Mr. Girish Kulkarni, Senior Advocate a/w. Sadanand Shetty, Ms. Snehal Khairnar, Yogendra Singh for Respondent No.2

**CORAM : A. S. GADKARI AND
SHYAM C. CHANDAK, JJ.**

**RESERVED ON : 6th FEBRUARY, 2024
PRONOUNCED ON : 22nd FEBRUARY, 2024**

JUDGMENT [PER S.C. CHANDAK, J.]

1) By this Petition filed under Article 226 and 227 of the Constitution of India read with Section 482 of the Criminal Procedure Code,

**HEMANT
CHANDERSEN
SHIV**

the Petitioner is seeking to quash the Order dated 28th February 2014, passed in Criminal Complaint No.26(A)/Misc/2013 by the Metropolitan Magistrate, 8th Court, at Esplanade, Mumbai and MECR No.1/2014 registered with Azad Maidan Police Station, pursuant to the said Order.

2) Heard Mr. Lalla, learned counsel for the Petitioner, learned APP for the State and Mr. Girish Kulkarni, learned Senior Advocate for Respondent No.2. Perused the record. It be noted here that, initially, this Petition was heard on 24th January 2024 and closed for Order. On that day, Advocate for Respondent No.2 was not present. Thereafter, *vide* Order dated 6th February 2024 passed in Interim Application No.2235 of 2024, filed by the Respondent No.2, Mr. Girish Kulkarni, learned Senior Advocate was heard at length on the same day and again the Petition was closed for Judgment.

3) Record indicates that, Rules was granted on 14th January 2015 and it was directed that, during the pendency and final disposal of this Petition, there shall be an interim relief in terms of prayer clause (d).

4) Respondent No.2 had filed the complaint No.26(A)/Misc/2013 in the Court of Metropolitan Magistrate, 8th Court, at Esplanade, Mumbai. In the said complaint it is stated that, the Respondent No.2 (*'the Complainant'*, for short) is a businessman and resident of Dubai since 1969. The Complainant has invested in an Indian company known as M/s. Varshraj

Realtors Pvt. Ltd. (*the company*, for short) established in 1995. The company's 99.9% (approx.) shareholding belongs to the Complainant and his wife. The Complainant is the Chairman of the company. Since 1998, the company holds an irrevocable and detailed Development rights in a Plot, situated at Powai, Mumbai, India.

4.1) It is alleged that, the Petitioner (Original Accused) has filed a Suit No.1418 of 2012, on 25th June 2012, before this Court, against the Complainant. It is alleged that, a Memorandum of Understanding (MOU) dated 25th July 2008, enclosed with the plaint is forged and fabricated document.

4.2) It is stated that, on 25th September 2012, the Complainant lodged the complaint (Exhibit-'B') with the Vice Consul, Consulate General of India, Dubai (U.A.E.) and *vide* letter dated 1st October 2012, the Vice Cousul, Consulate General of India, Dubail (U.A.E.) forwarded the said complaint to the Deputy Commissioner of Police, (Headquarters-1), Mumbai Police, Government of Maharashtra, Police Headquarters, D.N. Road, Mumbai, Maharashtra, India for their action according to law. Accordingly, the investigation was transferred to Azad Maidan Police Station, Mumbai and Officers of the said Police Station have investigated the matter.

4.3) That, one of the Associates for the Complainant obtained the opinion of the Handwriting Expert, Mr. Firoz Sheikh in respect of the forged

MOU dated 25th July 2008. Said opinion given by the Handwriting Expert clearly shows that Complainant's signature on the MOU has been forged. Hence, the Complainant written a letter dated 14th April 2013 to the Vice Consul, Consulate General of India, Dubai (U.A.E.) along with opinion of the Handwriting Expert and the said complaint was forwarded by the Vice Consul, Consulate General of India, Dubai (U.A.E.) *vide* their letter dated 17th April, 2013 to the Joint Commissioner of Police, Crime Branch, Mumbai. In turn, the said letter was forwarded to Azad Maidan Police Station, Mumbai for further investigation.

4.4) It is further stated that, Officers of Azad Maidan Police Station investigated the said matter properly and convinced that, the offence of cheating and forgery has been made out. However, the police misinterpreted the provisions under Section 195 of the Cr.P.C. and formed their opinion that, there is a bar to investigate the matter when the matter is pending before the concerned Court. It is further stated that, the said Officers has misinterpreted the provisions of law and addressed the letter dated 2nd August 2013 to the Complainant mentioning that the Complainant has to approach the Court for justice.

4.5) That, on 18th October 2013, the Complainant approached to the Deputy Commissioner of Police, Zone-1, in respect of the present case. Despite the personal meeting, the said Deputy Commissioner of Police,

Zone-1 did not take any action and confirmed the ingredients of the letter issued by Officers of Azad Maidan Police Station, Mumbai.

4.6) That, when the alleged offence of forging the MOU was committed prior to its production in the Court, in that case no complaint by Court would be necessary and the criminal complaint is maintainable. In present case, the said MOU is dated 25th July 2008 and it was produced before this Court in and about June 2012. The said ratio has been decided by the Hon'ble Supreme Court in several matters and law has been settled down by the Hon'ble Supreme Court. Therefore, the letter issued by the concerned Police Station is bad in law.

4.7) It is stated that, thus, the Azad Maidan Police failed to take action against the Petitioner, therefore, the Complainant approached to the Deputy Commissioner of Police of the same zone but despite of that the Azad Maidan Police failed to take any action against the Petitioner. Therefore, the Complainant filed said complaint before the Metropolitan Magistrate, 8th Court at Esplanade, Mumbai.

5) In view of the aforesaid allegations in the complaint, the learned Magistrate passed the impugned Order under Section 156 (3) of Cr.P.C. and referred the complaint for investigation. Pursuant to the said Order, Azad Maidan Police Station registered the MECR No.1 of 2014.

6) Mr. Lalla, learned counsel for the Petitioner submitted that, even

though various grounds are taken in the petition to seek the reliefs prayed for, the impugned Order and said MECR are mainly challenged on the ground that, before filing the said complaint, the Respondent No.2 did not avail the remedy provided under Section 154 (1) and 154 (3) of Cr.P.C. The complaint is not supported by an Affidavit duly sworn by the Complainant. For these shortcomings, the impugned Order cannot be passed and nor said MECR can be registered. Hence, the impugned Order and said MECR are not sustainable in law. As a result, the same are liable to be quashed. To lend the support to the aforesaid submissions, Mr. Lalla, learned counsel has cited the following reported decisions.

- (i) Priyanka Srivastava and Anr. Vs. State of Uttar Pradesh and Ors.¹;
- (ii) Smt. Saritha Sekhar and Ors. Vs. State of Karnataka and Ors.²;
- (iii) Shilpa Kishore Vs. the State of Karnataka and Ors.³;
- (iv) Babu Venkatesh and Ors. Vs. State of Karnataka and Anr.⁴;
- (v) Latika Kumari Vs. Government of U.P. and Ors.⁵;
- (vi) Iqbal Singh Marwah and Anr. Vs. Meenakshi Marwah and Anr.⁶.

7) Mr. Girish Kulkarni, learned Senior Counsel for the Respondent No.2 submitted that, there is sufficient compliance of the provisions of

1 (2015)6 SCC 287.

2 Criminal Petition No.7866/2022 a/w. Criminal Petition No.833/2023 (Karnataka High Court).

3 Special Leave Petition (Crl.) No.8931-8932/2023 arising out of Criminal Petition No. 7866/2022 a/w. Criminal Petition No. 833 of 2023.

4 Criminal Appeal No.252 of 2022 (Supreme Court for quashing)

5 Criminal Writ Petition No. 68/2008 (Supreme Court)

6 Criminal Appeal No. 402/2005 (Supreme Court)

Sections 154 (1) and 154 (3) of Cr.P.C. in this case. The affidavit to be given in support of the complaint in view of the decision in the case of Priyanka Srivastava (supra), is a procedural requirement. Such an affidavit is not necessary in this case because the complaint was filed before the date of the decision in the case of Priyanka Srivastava (supra), therefore, this reported decision has no retrospective effect. The offence stated in the complaint is clearly made out against the Petitioner. There is nothing wrong with the impugned Order as the same is passed with proper application of mind as required by law. As such, there is no substance in the submissions advanced on behalf of the Petitioner, therefore, the Petition may be dismissed.

8) In the case of Priyanka Srivastava (Supra) it is held that, there has to be prior application under Section 154 (1) and 154 (3) of Cr.P.C. while filing a petition under Section 156 (3) of Cr.P.C. Both the aspects should be clearly spell out in the application and necessary documents to that effect shall be filed. Therefore, in the case in hand, before filing the complaint, the Complainant should have complied with the provisions of Section 154 (1) and 154 (3) of Cr.P.C.

9) In the case in hand, admittedly, the Complainant directly sent his written report/complaint (Exhibit-'B') to the Vice Consul, Consulate General of India, Dubai (U.A.E.). In turn, the later office forwarded the said complaint to the Deputy Commissioner of Police, (Headquarters-1), Police

Headquarters, D.N. Road, Mumbai, for its action according to law. Accordingly, the investigation was directed to Azad Maidan Police Station, Mumbai and said police investigated the matter.

9.1) From the above facts it is crystal clear that, the said report was not directly filed by the Complainant with Azad Maidan Police Station by going there, therefore, in our opinion, there was non-compliance with the provisions of Section 154 (1) of Cr.P.C. by the Complainant.

9.2) The Complainant claimed that, Officers of Azad Maidan Police Station investigated into the said report properly and convinced that, the offence of cheating and forgery has been made out, but said police misinterpreted the provisions of Section 195 of the Cr.P.C. and formed their opinion that, there is a bar to investigate the matter when the matter is pending before the concerned Court (*vide* Exhibit-'D'). Therefore, on 18th October 2013, the Complainant approached the Deputy Commissioner of Police, Zone-1, in respect of this case. However, said meeting did not fructify as it confirmed the letter (Exhibit-'D'). Undoubtedly, this method adopted by the Complainant is not in accordance with the procedure stated in Section 154 (3) of Cr.P.C. nor it can be treated as substantive compliance of Section 154 (3) of Cr.P.C. Because, said Section 154 (3) of Cr.P.C. requires that, 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 Sub-Section (1) may send the

substance of such information in writing and by post, to the Superintendent Police concerned (parallel authority in Police Commissioner area) for the needful. In the case in hand, there is no specific mention in the complaint that as Azad Maidan Police refused to record his report (*vide* Exhibit-‘D’), the Complainant adopted the procedure provided in Section 154 (3) of Cr.P.C. Therefore, we hold that there was also non-compliance with Section 154 (3) by the Complainant.

10) However, the learned Magistrate overlooked the aforesaid non-compliance of Section 154 (1) (3) of Cr.P.C. before passing the impugned Order. That apart, bare look at the impugned Order shows that, the said Order has been passed by the learned Magistrate only observing that the complaint *prima facie* disclosed the commission of cognizable offence of the alleged forgery done before the document (MOU) was filed in the Court. Withal, not a single reason is recorded by the learned Magistrate as to why he is satisfied that there is *prima facie* case of a cognizable offence of the forgery, as alleged. Similarly, from the impugned Order it is not intelligible as to how the learned Magistrate verified the truth of the complaint and veracity of the allegations therein. According to us, in view of the fact that the civil suit of the Petitioner preceded to the complaint and it was pending in the High Court, the learned Magistrate was expected to record some reasons about his satisfaction as to the *prima facie* case of the cognizable

offence and necessity to pass the impugned Order.

11) In the backdrop, in our opinion, before passing the impugned Order the learned Magistrate failed to apply his mind to the complaint meaning thereby the learned Magistrate failed to properly consider the complaint and the documents enclosed therewith and that, there is non-compliance of the provisions of Section 154 (1) (3) of Cr.P.C. by the Complainant. Thus, the learned Magistrate acted mechanically and passed the impugned Order. In the backdrop, the impugned Order is not sustainable in law.

12) Our conclusion above is well supported by the settled position of law and as has been enunciated by this Court in the case of *Sayed Anwar Ahmed & Anr. vs. The State of Maharashtra & Anr. : 2017 SCC OnLine 3972* that, “While dealing with a complaint seeking an action under Sub-Section (3) of Section 156 of Cr.P.C, the learned Magistrate cannot act mechanically. He is required to apply his mind to the contents of the Complaint and the documents produced along with the Complaint. An Order passed on the said complaint must record reasons in brief which should indicate application of mind by the Magistrate. However, it not necessary to record detailed reasons. The power under Sub-Section (3) of Section 156 is discretionary. Only because on plain reading of the Complaint, a case of commission of cognizable offence is made out, an Order of investigation should not be

mechanically passed. In a given case, the learned Magistrate can go in to the issue of the veracity of the allegations made in the complaint. The learned Magistrate must also consider the other relevant aspects such as the inordinate delay on the part of the Complainant. The nature of the transaction and pendency of civil proceedings on the subject are also relevant considerations. Necessary averments recording compliance with Sub-Sections (1) and (3) of Section 154 of the Cr.P.C. should be incorporated with material particulars. Moreover, the documents in support of the said averments must be filed on record”.

13) 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).

14) 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

reason of non-compliance with Section 154 (1) (3) of Cr.P.C. as noted above, said decision is applicable here.

14.1) 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 31st July 2023 to avail such other remedy as may be available under law.

15) Conspectus of the above discussion is that, the impugned Order dated 28th February 2014, passed in Criminal Complaint No.26(A)/Misc/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.

16) Writ Petition is allowed in terms of prayer clause (c).

16.1) Rule is made absolute.

(SHYAM C. CHANDAK, J.)

(A. S. GADKARI, J.)