



2024:DHC:1219



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of decision: 15.02.2024

+ CRL.M.C. 141/2022
SENTHILVELKUMAR

..... Petitioner

Through: Mr. S. Muthu Krishnan, Adv.

versus

STATE THROUGH SHO & ANR.

..... Respondents

Through: Mr.Aman Usman, APP.
Insp. Virendra Pakhare, PS IGI
Airport, New Delhi.
Mr.Dinesh Kumar, Ms.Preeti
Thakur, Mr.Abhishek Maroria,
Adv. for R-2.

CORAM:

HON'BLE MR. JUSTICE NAVIN CHAWLA

NAVIN CHAWLA, J. (ORAL)

1. This petition has been filed under Section 482 of the Code of Criminal Procedure, 1973 (in short, 'CrPC') challenging the order dated 28.11.2020 passed by the learned Additional Chief Metropolitan Magistrate-01, New Delhi District, Patiala House Courts, New Delhi in Case No. 13202/2019, titled as *Air Works India Engineering Pvt. Ltd. v. B. Senthil Vel Kumar*, directing the SHO Police Station: IGI Airport to register the FIR under the appropriate Sections of law



on the complaint filed by the respondent no.2 herein, that is, the complainant, and take appropriate action thereon.

Factual Background

2. It is the case of the complainant that the petitioner was working as a Junior Engineer with the complainant, and after obtaining various promotions, was last designated as Deputy Manager, from which position he resigned on 17.06.2019. In the course of his employment, the petitioner was entrusted with the records pertaining to company's customers and their aircraft, including the man power list, man hour workout files, work packs, commercial terms submitted under customers request for proposal, planning and other relevant documents for engineering services to be provided on the data from time to time. This information was confidential in nature and was stored in the official computer system allotted to the petitioner.

3. It is alleged that the petitioner has unauthorizedly copied the said confidential data from the official computer system into his own personal hard disk, and the said hard disk remained in his possession till it was returned by him to the representative of the company. On resignation, the petitioner wanted to join another company.

Submissions of the learned counsel for the petitioner

4. The learned counsel for the petitioner submits that in the application filed under Section 156(3) of the CrPC, the



respondent no.2/complainant had not made any averment of the steps taken under Section 154 of the CrPC, and most specifically Section 154(3) of the CrPC. Placing reliance on the judgment of the Supreme Court in ***Priyanka Srivastava and Another v. State of Uttar Pradesh and Others***, (2015) 6 SCC 287, he submits that in the absence of such averment, the application filed under Section 156(3) of the CrPC was not maintainable and was liable to be dismissed.

5. He further submits that the complaint has been filed by the respondent no.2 with a *mala fide* intent as the petitioner had resigned from his services and was demanding his overdue salary.

6. He submits that the respondent no.2 had threatened the petitioner of implicating him in a false case and had issued a Show Cause Notice dated 21.06.2019, which was replied to by the petitioner vide letter dated 21.06.2019 expressing his regret on copying of the data onto a hard disk. Instead of accepting the apology, which was written at the instance of respondent no.2 itself, respondent no.2 took the petitioner to his native residence and from there, recovered the hard disk.

7. He submits that copying of the data onto a hard disk is a general practice adopted by all the employees of respondent no.2.

8. He submits that a civil dispute should not be allowed to be converted into a commercial prosecution thereby jeopardizing the career of the petitioner. In support, he places



reliance on the judgment of the Supreme Court in the *State of Haryana & Ors. v. Bhajan Lal & Ors.*, 1992 Supp (1) SCC 3.

Submissions of the learned APP and learned counsel for the Respondent no.2

9. On the other hand, the learned APP and learned counsel for respondent no.2 submit that the respondent no.2 had filed a complaint under Section 200 of the CrPC along with an application under Section 156(3) of the CrPC. In the complaint filed, the respondent no.2 had averred that it had, before filing of the complaint, filed a written complaint dated 27.08.2019 to *acp-cybercell-dl@nic.in* and *acpdiu-swd-dl@delhipolice.gov.in..* As no action thereon was taken, the respondent no.2 had then sent a copy of the complaint to the DCP Cyber Crime Cell, ACP Cyber Crime Cell, and to the Commissioner of Police, by way of speed-post. It is only when no action was taken on these complaints, that the complaint under Section 200 of the CrPC along with an application under Section 156(3) of the CrPC was filed. They submit that this meets the requirement of Section 156(3) of the CrPC as laid down by the Supreme Court in *Priyanka Srivastava* (Supra).

10. On the allegation of *mala fide*, the learned counsel for respondent no.2 submits that this will be a matter of investigation and it cannot be pre-judged at this stage. He further submits that the data has been recovered from a personal hard disk recovered from the petitioner.



Analysis and Conclusion

11. I have considered the submissions made by the learned counsels for the parties.

12. In the present case, the complaint filed by the respondent no.2 under Section 200 of the CrPC *inter alia* states as under:-

“11. That in aforementioned circumstances the Complainant sent a written Complaint dated 27.08.2019 to cybercell-dl@nic.in and acpdiu-swd-dl@delhipolice.gov.in. The office copy of the said Complaint is annexed herewith as ANNEXURE-H. The Computer print out of the delivery report of the said email is annexed herewith as ANNEXURE-1. The Original certificate under section 65B of Indian Evidence Act is ANNEXURE-J.

12. That when no action is taken on the said Complaint, the Complainant sent a Copies of the said Complaint to the office of DCP Cyber Crime Cell, DCP Office Complex, Sector-19, Dwarka, New Delhi-110075; the office of ACP Cyber Crime Cell, DCP Office Complex, Sector-19, Dwarka, New Delhi -110075 and Office of Commissioner of Police, Police Head Quarters, ITO, Delhi on 06.09.2019 via speed post. The Original the postal receipts are annexed herewith as ANNEXURE-K (Colly).”

13. The above complaint was accompanied with an application under Section 156(3) of the CrPC, which, in the first paragraph, stated that all the contents of the complaint be read as a part of the said application. It is reproduced as under:-

“1. That the Complaint has filed accompanying Complaint under section 200 of the Code of Criminal procedure read with section 405 IPC & 43/66B OF IT ACT. The contents of the said complaint may also be read as part and



parcel of the present application as the content thereof are not repeated for the sake of brevity.”

14. The complaint filed by the respondent no. 2 was duly supported with an affidavit.

15. In **Priyanka Srivastava** (Supra), the Supreme Court has held as under:-

“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.”

16. In my view, with the above averments of the respondent no.2 in the complaint of having earlier made complaints at the Cyber Cell, DCP Cyber Cell, ACP Cyber Cell, and also to the Commissioner of Police, and the complaint being supported by an affidavit, the respondent no.2 had met with the requirement of Section 156(3) of the CrPC as laid down by the Supreme Court in **Priyanka Srivastava** (Supra).

17. As far as the plea of the petitioner that the complaint has been lodged with an ulterior motive and is liable to be quashed, in my view, the said plea is highly premature.

18. In **Ramveer Upadhyay and Another v. State of UP and Another**, 2022 SCC OnLine SC 484, the Supreme Court has reiterated that the criminal prosecution, even otherwise justified based upon adequate evidence, does not become vitiated on



account of *mala fide* of the informant or the complainant. It has further been held that whether the litigations are true or untrue would have to be decided in the trial. In the exercise of powers under Section 482 of the CrPC, the Court does not examine the correctness of the allegations in the complaint except in exceptionally rare cases where it is patently clear that the allegations are frivolous or do not disclose any offence.

19. In a very recent judgement of the Supreme Court in Criminal Appeal No. 843 of 2024, titled as ***Directorate of Enforcement v. Niraj Tyagi & Ors.***, decided on 13.02.2024, the Supreme Court has observed as under:

“20. In our opinion, it’s a matter of serious concern that despite the legal position settled by this Court in catena of decisions, the High Court has passed the impugned orders staying the investigations of the FIRs and ECIR in question in utter disregard of the said settled legal position. Without undermining the powers of the High Court under Section 482 of Cr.PC to quash the proceedings if the allegations made in the FIR or complaint prima facie do not constitute any offence against the accused, or if the criminal proceedings are found to be manifestly malafide or malicious, instituted with ulterior motive etc., we are of the opinion that the High Court could not have stayed the investigations and restrained the investigating agencies from investigating into the cognizable offences as alleged in the FIRs and the ECIR, particularly when the investigations were at a very nascent stage. It hardly needs to be reiterated that the inherent powers under Section 482 of Cr.PC do not confer any arbitrary jurisdiction on the High Court to act according to whims or caprice. The statutory power has to be



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exercised sparingly with circumspection and
in the rarest of rare cases.....”
(emphasis supplied)

20. Presently, by the Impugned Order, the FIR has been directed to be registered and the matter will be investigated by the Police. The petitioner is yet to give its say to the prosecution. At present, however, it is an admitted fact that the petitioner had tendered an apology by a letter dated 21.06.2019, and also admitted to the recovery of the hard disk from his residence.

21. In view of the above judgements and considering the facts of the present case, therefore, no ground for interference on the merits of the FIR has been made out by the petitioner, at this stage.

22. I, therefore, find no merit in the present petition. The same is accordingly, dismissed. There shall be no order as to costs.

NAVIN CHAWLA, J

FEBRUARY 15, 2024/rv/ss

[Click here to check corrigendum, if any](#)