



2025:DHC:1788



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

% *Pronounced on: 20.03.2025*

+ **CRL.M.C. 882/2017, CRL.M.A. 3717/2017 & CRL.M.A. 1708/2022**

SARIKA BHAGAT Petitioner
Through: Ms. Isha Kapoor and Mr. Jai Saini,
Adv. along with petitioner (through
VC)

versus

STATE (GOVT OF NCT OF DELHI) & ANR Respondents
Through: Mr. Nawal Kishore Jha, APP.
Ms. Vandana Sharma, Adv. for R-2.

+ **CRL.M.C. 897/2017, CRL.M.A. 3770/2017 & CRL.M.A. 1640/2022**

RAJAT BHAGAT Petitioner
Through: Ms. Isha Kapoor and Mr. Jai Saini,
Adv. along with petitioner (through
VC)

versus

STATE (GOVT OF NCT OF DELHI) & ANR Respondents
Through: Mr. Nawal Kishore Jha, APP.
Ms. Vandana Sharma, Adv. for R-2.

CORAM:

HON'BLE MR. JUSTICE VIKAS MAHAJAN

JUDGMENT

VIKAS MAHAJAN, J.

1. The present petitions have been filed under section 482 CrPC seeking quashing of order dated 21.02.2017 passed by the Additional Sessions Judge-05 (West), Tis Hazari Court, New Delhi in Criminal Revision No. 56209/2016 whereby the criminal revision filed by the petitioners was dismissed and order dated 08.07.2016 passed by ACMM (West), Tis Hazari Courts, New Delhi in Compliant



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Case No. 15917/2016, directing registration of FIR in terms of Section 156(3) CrPC, was upheld.

2. The captioned petitions arise out of the same application/complaint case wherein the complainant is Chetna Kalra who has been arrayed as respondent no.2 in both the petitions. The petitioner in CRL.M.C. 897/2017 is the husband i.e. Rajat Bhagat while the petitioner in CRL.M.C. 882/2017 is the wife i.e. Sarika Bhagat. Since the petitions arise out of the same application/complaint and are challenging the same impugned orders, thus, both the petitions are being disposed of by a common judgment.

3. The brief facts of the case as alleged in the application/complaint case are that the respondent no.2/complainant had taken a personal loan on two occasions from the petitioner/Rajat Bhagat as he was engaged in the business of lending money on interest. At the first instance, a loan of Rs.3 lacs was advanced to the complainant through RTGS in the account of the respondent no.2/complainant on 24.06.2015 against which signatures as well as thumb impressions of the complainant and her husband were obtained on blank papers and blank e-stamp papers along with other documents. The documents collected by the petitioner/Rajat Bhagat included *inter alia* photographs, signed blank cheques, and blank promissory notes. Thereafter, the respondent no.2 took another personal loan of sum of Rs.1 lac in month of June 2015 from the said petitioner which was received through RTGS transaction as well.

4. At the time of taking the loan, it has been alleged by the complainant that the petitioner/Rajat Bhagat had assured her and her husband that a copy of the loan agreement would be provided to them. However, when the same was not supplied, the complainant along with her husband, on 13.03.2016 approached the petitioners demanding return of e-stamp papers, but instead they were handed over copy of a forged and fabricated Agreement to Sell and Purchase dated 24.06.2015 by the petitioners, which had never been executed by the complainant.



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5. In this backdrop the respondent no.2/complainant filed a complaint case bearing CC No. 15917/2016 under section 156(3) read with section 200 CrPC before the court of Ld. ACMM, Tis Hazari, Delhi praying for the registration of FIR against the petitioners under Sections 420/463/468/470/471/506/120B/34 IPC.

6. The learned ACMM (West), Tis Hazari Courts, Delhi, observing that the investigation by police is required, passed the order dated 08.07.2016 in the said complaint case directing the SHO, Police Station Patel Nagar to register a case under relevant provisions of law.

7. Aggrieved by the aforesaid order, petitioners filed a criminal revision bearing CR No. 56209/2016 in the Court of learned Additional Sessions Judge-05 (West), Tis Hazari Court, New Delhi. The said criminal revision was dismissed *vide* order dated 21.02.2017.

8. Ms. Isha Kapoor, the learned counsel for the petitioners submits that the complaint is based on a false concocted story. She submits that the petitioners and respondent no.2 are known to each other as they are residents of the same building/premises bearing property no. 35/10, West Patel Nagar, New Delhi. Respondent no.2 resides on the floor immediately below the petitioner's floor. The petitioner/Rajat Bhagat had earlier purchased a flat/floor in name of his wife from respondent no.2 and her husband i.e. 3rd floor of the same building/premises *vide* two registered Sale Deeds dated 06.04.2015 and 22.06.2015.

9. She submits that the respondent No.2/complainant approached the petitioners to sell the roof of third floor of the same property i.e. property no. 35/10, West Patel Nagar, New Delhi. The petitioners agreed to such proposal and hence an Agreement to Sell and Purchase dated 24.06.2015 was executed in the presence of the attesting witnesses between the respondent no.2, her husband, and the petitioner/Rajat Bhagat, for a total consideration of Rs.15,00,000/-. It was a term of the Agreement to Sell & Purchase dated 24.06.2015 that the transaction was to be completed within 365 days from the date of agreement.



10. The petitioners paid the consideration amount in the following manner.

S.No	Date	Amount paid	Mode
1.	24.06.2015	Rs.3 lacs	RTGS
2.	29.07.2015	Rs.1.45 lac	RTGS
3.	24.12.2015	Rs.7 lacs	Cash
4.	24.02.2016	Rs.3 lacs	Cash
	TOTAL	Rs. 14.45 lacs	

11. She submits that the petitioners paid a total sum of Rs. 14,45,000/- leaving balance of only Rs.55,000/-to be paid towards the total consideration of Rs. 15 lacs in terms of Agreement to Sell and Purchase dated 24.06.2015. Later, the petitioners came to know that the respondent no.2 and her husband were consulting with property dealers to sell the roof of the subject premises/property. Therefore, petitioner/Rajat Bhagat issued a legal notice dated 04.04.2016 and further filed a suit for Specific Performance on 30.05.2016, which is pending before the civil court.

12. Ms. Kapoor submits that the petitioners have a clear right in their favour since they are in possession of a concluded Agreement to Sell and Purchase along with more documents showing payments made to the respondent no.2 and her husband in lieu of the aforesaid agreement. It is only after the respondent no.2 and her husband denied performance of the agreement, the petitioners issued a legal notice. On receipt of the said notice, the respondent no.2 filed the false complaint in question in order to defeat the right of the petitioners. She points out that the respondent no.2 has not produced any loan agreement or any other document to support her claim.

13. She further submits that the impugned order dated 08.07.2016 passed by the learned Trial Court is a non-speaking order and not even a semblance of reason was recorded as to what were the considerations which persuaded the learned Trial



Court to direct registration of FIR against the petitioners herein. She states that the application under Section 156(3) CrPC filed by the respondent no.2 was not even supported by an affidavit of the complainant. She submits that this aspect was not considered at all by the trial court. Even further, the learned revisional court, although adverted to the issue raised regarding the filing of the application without a supporting affidavit, however, the objection of the revisionists was rejected with an incorrect understanding and appreciation of the law laid down by the Hon'ble Supreme Court in the case of **Priyanka Srivastava &Anr. v. State of Uttar Pradesh and others, (2015) 6 SCC 287**.

14. She invites the attention of the Court to paragraph no.18 of the impugned order dated 21.02.2017 passed by the learned Additional Sessions Judge which reads thus:

*“18. It is true that no affidavit has been filed in support of the complaint. Perusal of judgment in case of **Priyanka Srivastava & Anr. (Supra)** reveals that filing of affidavit can make the application more reliable. However, it does not say that mere non-filing of affidavit would render the application itself not maintainable. Even otherwise, this Court finds that there was sufficient material before the Court concerned to direct investigation of FIR. Therefore, there is no illegality in the order dated **8.7.2016**. The present revision petition therefore, stands **dismissed**. Consequently, the order of stay upon order dated **8.7.2016** stands **vacated**.”*

15. Ms. Kapoor submits that applications under Section 156(3) CrPC must be supported by a duly sworn affidavit and the learned ACMM ought not to have entertained an application which was not accompanied by such an affidavit. In this regard, she places reliance on following decisions (i) **Babu Venkatesh and others Vs. State of Karnataka and Another, (2022) 5 SCC 639**, and (ii) **Priyanka Srivastava and Anr. Vs. State of Uttar Pradesh and others, (2015) 6 SCC 287**.



16. *Per contra*, Ms. Vandana Sharma, the learned counsel for the respondent no.2 has supported the impugned order. She submits that learned Additional Sessions Judge has rightly observed that the facts before it requires police investigation in respect of the material which is not in the power and possession of the complainant/respondent no.2. She further submits that the intention of petitioners is to grab the property of the respondent no.2 and her husband. She contends that mere non-filing of affidavit alongwith application under section 156(3) CrPC would not render the said application not maintainable.

17. I have heard the learned counsel appearing on behalf of the petitioners, as well as, the learned counsel appearing on behalf of respondent and have perused the material on record.

18. It is not in controversy that the application filed by the respondent no.2/complainant was not accompanied with a supporting affidavit. Therefore, the primary question which confronts the Court in the present petition is whether it is mandatory to file an affidavit in support of an application under Section 156(3) CrPC. This question need not detain this Court any longer because the same is no more *res integra*.

19. The Hon'ble Supreme Court had settled the issue in **Priyanka Srivastava** (*supra*) while observing 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 are being filed. That apart, the learned Magistrate would also be aware of the delay in lodging of the FIR.

32. The present lis can be perceived from another angle. We are slightly surprised that the financial institution has been compelled to settle the dispute and we are also disposed to think that it has so happened because the complaint cases were filed. Such a situation should not happen.

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34. In view of the aforesaid analysis, we allow the appeal, set aside the order passed 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.”

(emphasis supplied)

20. A similar view was taken by Hon’ble Supreme Court in ***Babu Venkatesh v. State of Karnataka, (2022) 5 SCC 639:***

“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. 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.”

(emphasis supplied)

21. Likewise, in ***Ramesh Kumar Bung and Others v. State of Telangana and Anr., 2024 SCC OnLine SC 264***, the Hon’ble Apex Court reiterated that the directions in ***Priyanka Srivastava (supra)*** are mandatory.

22. Even the High Court of Judicature at Allahabad in ***Vinod Kumar v. State of U.P. and Another, (2023) SCC Online All 3045***, relying upon the decision in ***Priyanka Srivastava (supra)***, has observed that an application under Section 156(3) CrPC cannot be entertained if the same is not supported by an affidavit. The relevant part of the decision reads thus:

“40. From the above discussion, it is explicit that before taking recourse of the Court, the complainant ought to move to the police station for registration of the F.I.R. and if unattended there, move an application to the Superintendent of Police and this fact also be deposed clearly in his application under Section 156(3) Cr. P.C. moved before the Magistrate. In the matter in hand, copies of the applications moved by the applicant to the police station Gabhana, District Aligarh and to the S.S.P., Aligarh have been filed on record, but this fact has not been deposed anywhere by the informant by way of affidavit, which was a necessary compliance of the law governing the subject. Although the learned Court has not paid any attention to this legal omission and the impugned order has been passed on factual aspect, but this Court can, in no circumstance, ignore legal principles governing the present matter. If no affidavit was filed in support of the application under Section 156(3) Cr. P.C., it even, could not have been entertained by the court



concerned. The application itself suffers from a serious legal flaw and was not entertainable as such.

41. It is not required for this Court to examine the facts of the case and to draw a conclusion whether the learned Sessions Court analyzed the factual scenario of the matter in proper manner or not because it has been already held that the application in itself was not entertainable for want of affidavit and rejection of the same was a right consequence.

(emphasis supplied)

23. The Hon'ble Supreme Court in its recent decision in ***Kanishk Sinha & Anr. v. State of West Bengal & Anr., 2025 SCC OnLine 443***, has observed that the direction in ***Priyanka Srivastava (supra)*** that a complaint under section 156(3) CrPC must be accompanied by an affidavit, will be prospective in nature. To be noted, that the decision in ***Priyanka Srivastava (supra)*** was rendered on 19.03.2015 whereas the application under Section 156(3) CrPC came to be filed by the respondent no.2/complainant in the present case only on 23.03.2016. Therefore, it was obligatory for the respondent no.2/complainant to support his application under Section 156(3) CrPC with an affidavit.

24. The upshot of the above discussion is that the requirement that an application under section 156(3) CrPC must be supported by an affidavit is mandatory. In the case at hand, the application filed under Section 156(3) CrPC filed by respondent no.2/complainant, was not supported by an affidavit, therefore, the learned ACMM committed an error in entertaining the said application and passing an order for registration of FIR. The petitions thus, deserve to be allowed on this sole ground and all other rival contentions of the parties would pale into insignificance.



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25. Accordingly, the petitions are allowed and the impugned order dated 21.02.2017 passed by the Additional Sessions Judge-05 (West), Tis Hazari Court, New Delhi in Criminal Revision No. 56209/2016 and impugned order dated 08.07.2016 passed by the learned ACMM (West), Tis Hazari Courts, New Delhi in Compliant Case No. 15917/2016 along with all consequential proceedings emanating therefrom are hereby quashed and set aside.

26. The petitions stand disposed of.

VIKAS MAHAJAN, J.

March 20, 2025

N.S.ASWAL