

IN THE HIGH COURT OF JUDICATURE AT PATNA

Harish Kumar Gupta & Ors.

v.

The State of Bihar & Ors.

Criminal Writ Jurisdiction Case No. 760 of 2019

28 August, 2023

[Hon’ble Mr. Justice Anil Kumar Sinha]

Issue for Consideration

Whether the registration of an FIR under Section 156(3) Cr.P.C. without compliance with the mandatory requirements laid down by the Hon’ble Supreme Court in Priyanka Srivastava v. State of Uttar Pradesh is legally sustainable?

Headnotes

There is no statement in the complaint petition that the complainant before filing a complaint under Section 156 (3) Cr.P.C. had filed applications under Section 154 (1) Cr.P.C. & 154 (3) Cr.P.C. Admittedly the complaint is not supported by an affidavit. (Para 10)

Complaint was referred to Police under Section 156(3) on mere asking by the complainant. Magistrate is duty bound to see that the settled provisions enunciated under Section 154 (1) & 154(3) Cr.P.C. have been complied with. (Para 12)

Order by the learned Magistrate and the FIR are hereby quashed. (Para 14)

Case Law Cited

Priyanka Srivastava & Another v. State of Uttar Pradesh & Others, (2015) 6 SCC 287; Bipin Kumar Singh & Another v. State of Bihar & Others, 2016 (1) PLJR 923; Anand Kumar Mohatta & Another v. State (NCT of Delhi), Department of Home & Another, (2019) 11 SCC 706

List of Acts

Indian Penal Code, 1860 — Sections 406, 420, 409, 468, 471, 120B; Code of Criminal Procedure, 1973 — Sections 154(1), 154(3), 156(3)

List of Keywords

Quashing of FIR; Section 156(3) Cr.P.C.; Prior application under Section 154; Commercial dispute; Abuse of process; Affidavit requirement; Priyanka Srivastava case; FIR compliance; Cognizable offence; Judicial oversight

Case Arising From

Barh PS Case No. 409 of 2014, arising from Complaint Case No. 708(C) of 2014

Appearances for Parties

For the Petitioners: Mrs. Archana Sinha, Advocate; Mr. Alok Kumar @ Alok Kr. Shahi, Advocate

For the Respondent/State: Mr. Prabhat Kumar Verma, Advocate; Mr. Suman Kumar Jha, AC to AAG 3

For Respondent No. 4: Mr. Arun Kumar Arun, Advocate

Headnotes Prepared by Reporter: Amit Kumar Mallick, Adv.

Judgment/Order of the Hon’ble Patna High Court

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Writ Jurisdiction Case No.760 of 2019

Arising Out of PS. Case No.-409 Year-2014 Thana- BARH District- Patna

1. HARISH KUMAR GUPTA @ HARISH Son of Late Shyam Sunder Gupta, being the partner of Bharat Convencing Co., Resident of 54/4, Om Bhawan, Strand Road, Posta Bazar, P.S.- Bara Bazar, Distt - Kolkata.
2. Panna Lal Sah Son of Late Baijnath Sah, being the partner of Ankit Industries Resident of 11- A/4- 10, Gora Para Sarkar Lane, P.S.- Ultadanga, Distt - Kolkata.
3. Nikhil Poddar Son of vinod Kumar Poddar, being the partner of M/s Vinod Kumar and Bros, Having its Place of business at P - 200, Shop A/6, Jagganath Ghat Cross Road, P.S.- Posta, Distt - Kolkata.
4. Jayvardhan Gupta @ Jayvardhan Son of Binulal Karibal Resident of 188-A/15, Manik Talla Main Road, P.S.- Manik Talla, Distt - Kolkata.

... .. Petitioner/s

Versus

1. THE STATE OF BIHAR THROUGH THE PRINCIPAL SECRETARY, HOME DEPTT. GOVT. OF BIHAR, PATNA
2. The Senior Superintendent of Police, Patna.
3. The Officer-in Charge, Barh Police Station, Patna.
4. Manish Kumar S/O Sri Surendra Prasad R/O- Mohalla- Salempur, Gola Road, P.S.- Barh, District-Patna

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mrs. Archana Sinha, Adv. Mr.Alok Kumar @ Alok Kr Shahi
For the Respondent/State:		Mr.Prabhat Kumar Verma Mr. Suman Kumar Jha, AC to AAG 3
For the Respondent No. 4:		Mr. Arun Kumar Arun, Adv.

CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR SINHA
CAV ORDER

- 8 28-08-2023 1. The present writ application has been filed seeking quashing of the First Information Report bearing Barh PS Case No. 409 of 2014 registered on 09-10-2014 under Section 406, 420, 409 , 468, 471 & 120B of the Indian Penal Code.
2. Brief facts giving rise to the present writ



application is that on 26-09-2014, the Opposite Party No. 4 / complainant filed a complaint petition in the court of Additional Chief Judicial Magistrate, Barh, Patna under Sections 406 / 420 / 409 / 506 / 468 / 471 / 120B of the IPC against the petitioners and one other accused person which was registered as Complaint Case No. 708 (C) of 2014. It has been stated in the complaint that on 08-12-2012, the petitioner no. 1, who is an agent made an offer to the complainant and persuaded him to purchase lentils @ Rs. 3451/- per quintal to which the complainant agreed and Rs. 30,000/- was paid as advance. Again at the request of the petitioners / accused persons the complainant purchased lentils @ of Rs. 3505 /- per quintal and further made a payment of Rs. 25,000/- as advance. The petitioners having received part of the consideration amount did not supply the lentils to the complainant and hence the aforesaid complaint case was filed against the petitioners. The learned A.C.J.M., Barh, Patna in exercise of power under Section 156 (3) of the Cr.P.C. directed for registration of the F.I.R. Accordingly, Barh PS Case No. 409 of 2014 was registered on 09-10-2014 (Annexure -1).

3. Learned counsel for the petitioners submits that the F.I.R. in question was registered on the direction of the learned



Magistrate dated 26-09-2014 under Section 156(3) of the Cr.P.C. The allegation against the petitioners in the complaint petition upon bare reading does not disclose any criminal offence and the same is the result of commercial dispute between the parties. From perusal of the complaint petition it does not appear that Section 156(3) Cr.P.C. application filed by the Opposite Party No. 4 was supported by an affidavit duly sworn by the complainant. There is no statement in the complaint petition that the complainant / opposite party no. 4 had given prior application under Section 154(1) & 154 (3) Cr.P.C. to the S.H.O. and Superintendent of Police before filing a petition under Section 156(3) of the Cr.P.C. Accordingly, submission is that in the light of the judgment of the Hon'ble Apex Court in the case of Priyanka Srivastava and Another vs. State of Uttar Pradesh and Others reported in (2015) 6 SCC 287 the complaint is not maintainable and as such the F.I.R. which has been lodged under Section 156(3) Cr.P.C. is fit to be quashed.

4. Learned counsel further relies on a judgment of this court reported in 2016 (1) PLJR 923 Bipin Kumar Singh & Anr. vs. The State of Bihar through the Director General of Police & Ors. and submits that this court after taking into consideration



the judgment of Priyanka Srivastava (supra) has been pleased to quash the F.I.R. registered under Section 156(3) Cr.P.C. She has also relied upon a judgment reported in (2019) 11 SCC 706 Anand Kumar Mohatta and Another versus State (NCT of Delhi), Department of Home and Another on the proposition that court can quash the F.I.R. even after filing of the charge sheet.

5. On the other hand, learned counsel for the Opposite Party No. 4 argued that the statement made in the complaint case gives rise to criminal offence inasmuch as the petitioners after receiving the amount with dishonest intention did not supply lentils to the complainant. He further submits that Police after investigation has submitted charge- sheet. Accordingly this writ application is fit to be dismissed.

6. On the other hand, learned counsel for the State referring to the counter affidavit submits that Barh PS Case No. 409 of 2014 was instituted on the basis of the direction issued by learned Magistrate under Section 156(3) Cr.P.C. in Complaint Case No. 708(C) of 2014. The FIR is still under investigation because during supervision certain directions were issued and no final finding has been given by the Supervising Officer.



7. I have heard learned counsel for the petitioners, State and Opposite Party No. 4. In nutshell the argument of learned counsel for the petitioners is that power vested in the Magistrate under Section 156 (3) Cr.P.C. can be exercised only when the Officer- in- charge of the Police Station has refused to register the F.I.R. given by the informant disclosing commission of cognizable offence and despite being approached the Superintendent of Police has failed to take appropriate action as provided under Section 154 (3) of the Cr.P.C. The Hon'ble Supreme Court has considered the exercise of power by the Magistrate under Section 156(3) Cr.P.C. in the judgment rendered in Priyanka Srivastava (supra) which has been relied upon by learned counsel for the petitioners.

8. Paragraphs- 30 & 31 of the said judgment is quoted herein below for ready reference:-

“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.”

9. The Hon’ble Supreme Court in the case of Priyanka Srivastava (supra) has held that there has to be prior applications under Section 154(1) & 154 (3) Cr.P.C. and further that Section 156 (3) Cr.P.C. application is to be supported by an affidavit duly sworn by the complainant who seeks invocation of the jurisdiction of the Magistrate. The Supreme Court has further held that both these aspects must be spelt out in the application / complaint and necessary documents to that effect must be filed.

10. From perusal of the complaint petition it appears that the complainant / opposite party no. 4 has filed the present complaint under Section 156 (3) Cr.P.C. praying therein that the present complaint may be forwarded to the Barh P.S. under Section 156 (3) Cr.P.C. for registration of the FIR against the accused persons. Upon filing of the complaint petition, the learned Magistrate on 26-09-2014 endorsed the same to the S.H.O. of Barh Police Station for institution of the F.I.R. under Section 156 (3) Cr.P.C. for investigation. There is no statement in the complaint petition that the complainant before filing a complaint under Section 156 (3) Cr.P.C. had filed applications under Section 154 (1) Cr.P.C. & 154 (3) Cr.P.C. Admittedly the complaint is not supported by an affidavit.



11. As per the law laid down by the Supreme Court in Priyanka Srivastava (supra) before referring the complaint under Section 156(3) Cr.P.C. it was incumbent upon the learned Magistrate to see that before filing the complaint petition the complainant approached the S.H.O. of the Police Station for registering the F.I.R. disclosing commission of cognizable offence and on refusal of the S.H.O. to register the F.I.R. the complainant preferred application / information in writing by post to the Superintendent of Police under Section 154 (3) Cr.P.C.

12. In exercise of power under Section 156(3) Cr.P.C. the Magistrate is duty bound to see that the settled provisions enunciated under Section 154 (1) & 154(3) Cr.P.C. have been complied with. From the record it emerges that before filing the complaint petition the complainant did not take any action under Section 154 (1) & 154(3) Cr.P.C. and also the complaint is not supported by any affidavit. It is also apparent that the complaint was referred to Police under Section 156(3) on mere asking by the complainant.

13. In view of the discussions held hereinabove, I am of the considered opinion that the judgment relied upon by the petitioners i.e. Priyanka Srivastava (supra) and Bipin Kumar



Singh (supra) are fully applicable in the facts of the present case. Hence forwarding the complaint to Police under Section 156(3) Cr.P.C. by the learned A.C.J.M, Barh, Patna on 26-09-2014 for registration of the F.I.R. and for investigation was not justified and amount to abuse of the process of court.

14. Accordingly, the order dated 26-09-2014 forwarding the complaint by the learned A.C.J.M., Barh, Patna and the FIR bearing Barh PS Case No. 409 of 2014 dated 09-10-2014 are hereby quashed.

15. The present application stands allowed.

(Anil Kumar Sinha, J)

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