

IN THE HIGH COURT OF KARNATAKA, KALABURAGI BENCH

THE HON'BLE Dr.JUSTICE H.B.PRABHAKARA SASTRY

CRIMINAL PETITION NO.201319/2019

DATED: 18-02-2020

C.M. Aleemullakhan and Another vs. The State of Karnataka
Through Gandhi Gunj P.S. Bidar and Another

ORDER

The summary of the case of the prosecution is that the second respondent, as a complainant, has filed a private complaint under section 200 of Code of Criminal Procedure, 1973 (hereinafter for brevity referred to as 'Cr.P.C.') against the present petitioners arraigning them as accused Nos.1 and 2, in P.C.No.109/2014 in the Court of the learned I-Additional JMFC (II) at Bidar (hereinafter for brevity referred to as 'trial Court') alleging that the accused by publishing a defamatory article in an Urdu newspaper by name "Salar", being published from Hubli of this State, has defamed his reputation and thereby has committed an offence punishable under section 500 of Indian Penal Code, 1860 (hereinafter for brevity referred to as 'IPC').

The complainant in the trial Court got himself examined as CW-1 and examined one more witness as PW-2 from his side and got marked documents as Exs.C1, C1(a), C2 and P2(a). The trial Court, by its order dated 28.04.2016, has taken cognizance of the offence punishable under section 500 of IPC and issued process to the accused for the alleged offence. It is the said order, the accused in the trial Court have challenged in this petition seeking quashing of the entire proceeding in the Court below.

2. Learned counsel for the petitioners, in his argument, canvassed only on one point that the private complaint filed by the complainant in the Court below under section 200 of Cr.P.C. was not accompanied with an affidavit, as such, 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, as such, it deserves to be quashed.

3. Learned High Court Government Pleader, in his argument, submitted that in the circumstances of the case, filing of such an affidavit by the complainant along with the complaint under section 200 of Cr.P.C. is not required.

4. The second respondent, who is the complainant, though was served with the notice, has remained absent.

Admittedly, the private complaint filed by the complainant/respondent No.2 was under section 200 of Cr.P.C. and it was unaccompanied with any affidavit. The learned counsel for the petitioners drew the attention of this Court to paragraph Nos.29, 30 and 31 in the judgment of *Priyanka Srivastava's* case (supra) which reads as below:

"29. At this stage it is seemly to state that power under Section 156 (3) warrants application of judicial mind. A court of law is involved. It is not the police taking steps at the stage of Section 154 of Code. A litigant at his own whim cannot invoke the authority of the Magistrate. A principled and really grieved citizen with clean hands must have free access

to invoke the said power. It protects the citizens but when pervert litigations takes this route to harass their fellow citizens, efforts are to be made to scuttle and curb the same.

30. In our considered opinion, a stage has come in this country where Section 156 (3) Cr.P.C. 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.”

5. Learned counsel for the petitioners also places photo copies of an order of Co-ordinate Bench of this Court in *Sri M.P.Renukacharya and others vs. State of Karnataka and another* in Criminal

Petition No.3431/2015 dated 04.09.2015 and another order of another Co-ordinate Bench in *Sri Abdulla M and others vs. B.P. Rajeevlochanna* in *Criminal Petition No.5212/2016 dated 11.12.2019* and submitted that in those cases also the Co-ordinate Bench of this Court have consistently held that the complaint unaccompanied with the affidavit deserves to be quashed.

6. A careful reading of *Priyanka Srivastava's* case (supra), more particularly, paragraph Nos.29, 30 and 31, towards which the attention of this Court was drawn by the learned counsel for the petitioners, would go to show that the Hon'ble Apex Court has made an observation that in those matters where the petition has been filed under section 156(3) of Cr.P.C., which necessarily would precede by sections 154 (1) and 154 (3) of Cr.P.C., there must be an affidavit accompanying the complaint. The said affidavit would be a supportive affidavit to the complaint, so that the person making the application under section 156 (3) of Cr.P.C. 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. By observing so, the Hon'ble Apex Court has made it clear that once an investigation is ordered under section 156 (3) of Cr.P.C., the

Court must be satisfied that the complainant is serious about the complaints/ allegations made by him in his complaint which can only be ascertained through an affidavit filed by the complainant accompanying the complaint, so that the process of investigation by investigating agency shall not be misused or taken for granted by the complainant.

With great respect to the said judgment, it is submitted that the said judgment was in a case where based upon the complaint, a police investigation was ordered under section 156 (3) of Cr.P.C. However, the said judgment appears to have not discussed the aspect where the Magistrate without referring the matter for any investigation under section 156 (3) of Cr.P.C. proceeds himself in examining the complainant and the witnesses produced by him and also the exhibits marked by them in support of their complaint and thereafter proceeds to make an order regarding taking of cognizance.

In the instant case, as already observed above, though the complaint which was filed under section 200 of Cr.P.C. was unaccompanied with an affidavit, but the fact remains that the complainant got himself examined and got examined one more witness on his

behalf as PW-2 and got marked documents Exs.C1, C1(a), C2 and P2(a). It is only thereafter the trial Court, after analysing the evidence of the complainant in the form of a sworn statement and the evidence of PW-2, who was examined on behalf of the complainant and examining the documents marked as exhibits, found material in registering the case in Register No.III and taking cognizance of the offence. As such, it proceeded to pass the impugned order. Therefore, the question of the trial Court referring the matter to the investigation under section 156 (3) of Cr.P.C. has not arisen in the instant case.

7. In that view of the matter, since there is no order for investigation under section 156 (3) of Cr.P.C., in my view, the question of non-filing of an affidavit along with the complaint would not nullify the effect of the complaint or making complaint redundant. As such, the argument of the learned counsel for the petitioner that in view of *Priyanka Srivastava's* case (supra), an affidavit accompanying the complaint was mandatory even in the present case, is not acceptable.

8. A Co-ordinate Bench of this Court in *M.P. Renukacharya's case (Criminal Petition No.3431/2015)* (supra), after referring to *Priyanka Srivastava's case*, has quashed the FIR and consequential proceeding challenged before it, however, reserving liberty to the complainant to pursue his complaint in accordance with the procedure laid down by the Apex Court. It is to be observed that in the said case, based upon the complaint filed under section 200 of Cr.P.C. which was not accompanied with any affidavit, the Magistrate had directed for investigation to the Superintendent of Police, Lokayukta, Davangere, under section 156 (3) of Cr.P.C. vide his order dated 02.05.2014. Since there was invocation of section 156 (3) of Cr.P.C., probably the Co-ordinate Bench has applied the principle laid down by their Lordships in *Priyanka Srivastava's case* (supra) and passed the order quashing the FIR. Since the present case on hand differs from the one, as in the present case the Magistrate did not refer the complaint for its investigation under section 156 (3) of Cr.P.C., I do not think that the finding given in *M.P. Renukacharya's case* (supra) would have any bearing or influence on the present complaint.

Similarly, in *M. Abdulla's case* (supra) (*Criminal Petition No.5212/2016*) another Co-ordinate Bench of this Court also has allowed the petition by quashing

cognizance taken by the trial Court in a private complaint after relying the judgment of Hon'ble Apex Court in *Priyanka Srivastava's* case. However, from a perusal of the photo copy of the order passed in the said *M. Abdulla's* case (supra), since it cannot be made out as to whether any investigation was ordered under section 156 (3) of Cr.P.C. in the said case, it cannot be held that the said *M. Abdulla's* case (supra) was similar in the circumstances of the case, as the one on hand. As such, the said judgment also would not enure to the benefit of the present petitioners.

9. Consequently, I am of the view that since the trial Court has taken cognizance of the offence and ordered for registering the case in Register No.III, only after satisfying itself that prima facie there are material to take cognizance of the alleged offence, that too, after going through the sworn statement given by the complainant and the evidence given by PW-2 and also after perusing the documents marked as Exs.C1, C1(a), C2 and P2(a), I do not find any irregularity or illegality in the same. As such, the only ground of contention urged by the learned counsel for the petitioners is not acceptable. Consequently, I do not find any merit for admitting this petition.

Resultantly, the criminal petition stands
dismissed.