

(2018) 12 CAL CK 0130
In the Calcutta High Court
Case No : Criminal Revision No. 3657 Of 2018
In Re: Harish Bagla & Ors

Date of Decision : 20-12-2018

Acts Referred:

Code of Criminal Procedure, 1973 — Section 154(1), 154(3), 156(3), 438, 482
Indian Penal Code, 1860 — Section 120B, 420, 506(2)

Citation : (2018) 12 CAL CK 0130

Hon'ble Judges : Shivakant Prasad, J

Bench : Single Bench

Advocate : Sekhar Basu, Sandipan Ganguly, Debasis Roy, Kaushik Gupta, V. Jhunjhunwala, S. Shukla

Judgement

This is an application under Section 482 of the Code of Criminal Procedure praying for quashing of entire proceeding arising out of Bowbazar P.S. Case No.191 of 2018 dated 25th June, 2018 under Sections 120B/506(2)/420 of the Indian Penal Code corresponding to CGR Case No.700 of 2018 pending before the learned 2nd Additional Chief Metropolitan Magistrate Kolkata.

Mr. Sekhar Basu, learned senior counsel appearing on behalf of the petitioners at the outset invites my attention to the order dated 11th June, 2018 passed in Misc. Case No.59 of 2018 by which the learned Magistrate ordered for investigation under Section 156(3) of the Code of Criminal Procedure treating the same as an FIR with direction to submit compliance report on 26th June, 2018. This order has been seriously assailed at this stage on the score that the learned Magistrate has flouted the directives of the Hon'ble Supreme Court in Priyanka Srivastava's case reported in 2018 SCC Online Calcutta 4861 Column 2018 Calcutta Law Times (2018) 3 CAL LT 482 (HC), wherein this court at paragraph 16 has given direction to all the courts in West Bengal as guidelines for application of judicial mind by learned Judicial Magistrate while invoking power under Section 156(3) which clearly provides thus:-

"Therefore, I direct that learned Registrar General shall take immediate steps for issuance of suitable guidelines to all the Chief Judicial Magistrates, Chief

Metropolitan Magistrates, Additional Chief Judicial Magistrates, Additional Chief Metropolitan Magistrates, Judicial Magistrates through the District Sessions Judges and Metropolitan Magistrates, Calcutta of all the Districts of the State of West Bengal, which guidelines are laid down for application of judicial mind by the learned Judicial Magistrate while invoking power under Section 156(3) of the Code, as under -

1. The learned Magistrate would be well advised to verify the truth and the veracity of the allegations, regard being had to the nature of allegations of the case.
2. There has to be prior applications under Section 154(1) and 154(3) while filing a petition under Section 156(3) of the Code of Criminal Procedure.
3. Both the aspects should be clearly spelt out in the application and necessary documents to that effect shall be filed which are the sine qua non for application under Section 156(3) of the Code.
4. An application under Section 156(3) of the Code should be supported by an affidavit so that the person making the application should be conscious and also endeavour to see that no false affidavit is made.
5. 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.
6. Learned Magistrate would also be aware of the abnormal delay in lodging of the FIR in initiating criminal prosecution."

It is pointed out that in paragraph 15 of the application, the complainant had contended that she had lodged a written complaint to the Officer-in-Charge, Bowbazar Police Station on 13th April, 2018 whereas the complaint was filed on 26th April, 2018 on the ground that police had not taken any action against the accused persons in respect of the letter of complaint though the offence in nature is cognizable involving huge money.

It would appear from the guidelines embodied in the cited decision that there has to be prior applications under Section 154(1) and 154(3) while filing a petition under Section 156(3) of the Code of Criminal Procedure and both the aspects should be spelt out in the application and necessary documents to that effect shall be filed which are sine qua non for application under Section 156(3) of the Code.

In this context, it is submitted by Mr. Basu that there is no whisper of compliance of provision under Section 156(3) of the Code of Criminal Procedure. So, the learned Magistrate by flouting the directives without application of mind, and instant hold preliminary enquiry into the matter issued direction for investigation.

I am of the view that if this is an application of glaring case of flouting courts

directives, it is really a serious matter and not be taken so lightly in the case. I would like to mention that the advocate on record who was responsible for drafting the petition under Section 156(3) and the learned advocate appearing before the learned Magistrate who moved this application for such direction, has equally flouted the directions of the superior courts and that of the Hon'ble Supreme Court for the reasons best known to themselves. In this state of scenario, the matter is required to be further enquired into. Accordingly, I direct the learned Registrar General to call upon a report from the learned ACMM about the conduct of the court undergone by him who does not even care to consider the directives of this Hon'ble Court and further he will also submit the report as to who was the advocate on record to draft petition under Section 156(3) of the Code of Criminal Procedure.

Mr. Basu, has invited my attention to paragraph 9 of this revisional application that the petitioners application under Section 438 of the Code of Criminal Procedure in CRM 4821 of 2018 was rejected by the Division Bench of this Hon'ble Court vide order dated 4th December, 2018. However, prayer for anticipatory bail of the petitioner no.3 was allowed by the self-same order. Being aggrieved by the said rejection, the petitioners no.1, 2, 4 and 5 moved special leave petition being SLP (Cri) 10815 of 2018 before the Hon'ble Court and upon hearing the Hon'ble Supreme Court was pleased to direct issuance of notice in the said matter. The averments so recorded above, Mr. Basu relied on a decision in the case of (Sk. Murshidul Islam Vs. State of West Bengal & Anr.) reported in 1997 C.Cr.LR (Cal) 207 wherein Mr. Basu has invited my attention to the paragraph nos.5, 6 and 7 and further refused to the case of Central Bureau of Investigation Vs. Duncans Agro Industries Ltd. (supra) reported in 1996 C.Cr.LR (SC) 320 wherein the Hon'ble Supreme Court held that the quashing of the complaint was not unjustified because the averments made in the complaint is that no case for pre-investigation has been made out. In the present case, I find that the issue has been taken very technically that the process of investigation ought not have been issued by the learned Magistrate in violation of the directives of the Apex Court and that of this Court. However, the matter is required to be gone into the merit as to whether there is at all any offence committed being a cognizable offence or not. This fact cannot be lost sight of that the SLP against the order of for rejection of anticipatory bail the petitioners no.1, 2, 4 and 5 is still pending for decision.

The petitioner is directed to serve copy of the application along with annexures to the opposite party no.2 by speed post with a/d and the opposite party State through the learned Public Prosecutor within a period of one week and to file affidavit of service on the next date of hearing.

Let the matter appear on 7th January, 2019 under the heading "Adjourned Motion".

To date for report by the learned Magistrate through learned Registrar General. A copy of this order be sent to the learned Registrar General for necessary

compliance.

However, interim order of stay at this stage without considering the report of the learned Magistrate is kept pending.