

(2023) 11 CAL CK 0007

In the Calcutta High Court

Case No : Criminal Revision No. 2714 Of 2018, IA No. CRAN 2 Of 2019 (Old No. CRAN 1283 Of 2019)

Kaushik Kumar Kar & Anr.

APPELLANT

Vs

State Of West Bengal

RESPONDENT

Date of Decision : 18-11-2023

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 153(3), 154(1), 154(3), 156(3), 482

Citation : (2023) 11 CAL CK 0007

Hon'ble Judges : Subhendu Samanta, J

Bench : Single Bench

Advocate : Milon Mukherjee, Biswajit Manna, Narayan Prasad Agarwala, Pratick Bose

Final Decision : Disposed Of

Judgement

Subhendu Samanta, J

This is an application u/s 482 of the Code of Criminal Procedure preferred against an order dated 1st of September 2018 passed by the Learned Additional Chief Judicial Magistrate Bidhannagar in connection with MP Case No. 75 of 2018 thereby directing the Inspector In-charge of Bidhannagar South Police Station to conduct the investigation treating complaint of the opposite party No. 2 as a first information report.

The brief fact of the case is that petitioner No. 1 and 2 are the directors of M/S NC Print Private Limited engaged in trade of printing confidential documents for different Government Organisations. The petitioner No. 3 is a business associate of petitioner No. 1 but not associated with the company.

The opposite party No. 2 was a previous employee of the company and alleged that the primary business of the company revolved around leakage of question papers of different boards, universities, commission etc. The opposite party No. 2 has lodged a written complaint with the Learned ACJM Bidhannagar on 1st of

September 2018 contending inter alia with business of present petitioners regarding leakage of question papers has been informed to the police through IC Bidhannagar South on 30th of August 2018. Consequent thereto the opposite party No. 2 was threatened to kill by the present petitioners. The petitioner informed the matter through a complaint to police authorities against such conduct of the petitioner. It has been alleged that since then the opposite party was facing threat calls from accused persons and was attacked on 31st August, 2018 at Sukanta Nagar area. Accordingly he approached before the Learned Magistrate with a prayer u/s 156(3) of Cr.P.C.

On the basis of such written complaint the Learned Magistrate passed the impugned order on 1st of September 2018 and directed the IC Bidhannagar South Police Station to conduct investigation after treating the said petition of complaint as FIR.

Being aggrieved by the impugned order passed by the Learned Magistrate the instant criminal revision has been preferred.

Learned Advocate for the petitioner submits that the present opposite party No. 2 is one of the Ex-employee of the petitioner's company. The allegations made in the petition of complaint are totally false. The petition u/s 153(3) of Cr.P.C. does not disclosed any cognizable offence. The complaint is purposive and mala fide by an Ex-employee.

Learned Advocate for the petitioner further argued that the Learned Magistrate has failed to appreciate the guideline of Hon'ble Supreme Court passed in *Priyanka Sribastava Vs. State of Uttar Pradesh* (2015) 6 SCC 287.

He argued that the Learned Magistrate has forwarded complaint of the opposite party No. 2 and directed the concern IC to lodge FIR. The parameters of the Hon'ble Supreme Court passed in *Priyanka Sribastava Vs. State of Uttar Pradesh* (supra) has not been followed. He further argued that it is not specified in the petition of complaint whether the opposite party No. 2 has registered a GD or complaint to the concern Police Station on 30th of August 2018.

In this case the OP No. 2 after complaining to IC on 30.08.2018 u/s 154 (1) Cr.P.C., did not submit complaint u/s 154(3). The provision u/s 156 (3) Cr.P.C. cannot be invoked without following the procedure laid down u/s 154(1) and 154(3) Cr.P.C. There are no details in the petition of complaint how the complaint dated 30th of August 2018 was lodged with the PS.

Learned Advocate for the petitioner submits that the impugned order passed by the Learned Magistrate is liable to be set aside and the entire criminal proceeding need be quashed.

Learned Advocate appearing on behalf of the state submits that the present petitioner No. 1 is facing trial of same nature of offence of leaking of question papers in Chalapur PS (U.P. Baranasi). It is further submission of Learned Advocate for the state that there are sufficient materials which was collected by

the IO during the course of investigation. The impugned order passed by the Learned Magistrate is a speaking order and there is no impropriety of the said order. Thus it cannot be set aside.

Heard the Learned Advocates.

Perused the materials and also perused the impugned order passed by the Learned Magistrate.

In a case of Priyanka Sribastava Vs. State of Uttar Pradesh and Ors (supra) the Hon'ble Supreme Court has held that an application u/s 156 (3) Cr.P.C. seeking direction for registering FIR must be supported by an affidavit. The Hon'ble Supreme Court has also held that prior application u/s 154 (1) Cr.P.C. and Section 154 (3) Cr.P.C. have to be in existence while filing a petition u/s 156 (3) Cr.P.C. and these aspects should be clearly spelt out in the application u/s 156 (3) and necessary documents to that effect has to be filed.

Let me consider whether the guideline of Hon'ble Supreme Court in Priyanka Sribastava has been followed by this Learned Magistrate of this case. It appears that the petition of complaint has supported by an affidavit of OP No. 2 thus the first criteria of Priyanka Sribastava has been complied with.

The petition of complaint has disclosed regarding the filing of complaint with the police earlier to the filing of instant petition of complaint. The Learned Magistrate in passing the impugned order has perused the documents to that effect which spelt out the prior filing of complaint with the police authority.

I make it clear that the provision u/s 154 (3) only arises when there is a refusal of the police authority for recording the complaint u/s 154 (1) Cr.P.C. In this case the complainant has stated in his petition of complaint that the police authority has received the complaint; thus there is not denial as per provision u/s 154 (1) Cr.P.C. by the concern Police Authority.

Learned Magistrate has gone through the petitioner of complaint along with the documents and is of opinion that the directions of Hon'ble Supreme Court given in Latika Kumari and Priyanka Sribastava has been complied with. I find no infirmity in the finding of Learned Magistrate in passing the impugned Order.

In the case of Priyanka Sribastava (supra) the Hon'ble Supreme Court has criticized heavily regarding casual practice of preferring an application u/s 156(3) Cr.P.C. in a routine manner and forwarding the same to the police authority for investigation. The case before the Supreme Court in Priyanka Sribastava is totally different to the present case. Moreover, it appears to me that Learned Magistrate was justified in forwarding the petition of complaint to the concern police authority for investigation.

I find no merit to entertain the instant criminal revision as it is devoid of merit.

In conclusion thereof the instant criminal revision is dismissed.

The CRR is disposed of.

Connected CRAN applications if pending are also disposed of.

Any order of stay passed by this court during the pendency of the instant criminal revision is hereby vacated

Parties to act upon the server copy and urgent certified copy of the judgment be received from the concerned Dept. on usual terms and conditions.